1992

Arvilla Finlayson v. Roger Finlayson : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF [redacted]TE OF UTAH

ARVILLA FINLAYSON,

Plaintiff/[redacted]
Cross-[redacted]
v.

ROGER FINLAYSON,

Defendant/Respondent,
Cross-Petitioner

[redacted]1-CA
[redacted]. 16
[redacted]Court No. 904905062DA

BRIEF OF APPE[redacted]

AN APPEAL [redacted] JUDGMENT AND DE[redacted]DIVORCE OF THE THIRD [redacted] DISTRICT, S[redacted]COUNTY, UTAH, THE HONORABLE SENIOR JUDGE JOHN F. W[redacted]QUIST [redacted]RESIDING

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

ARVILLA FINLAYSON,	:	
	:	
Plaintiff/Appellant,	:	Case No. 920411-CA
Cross-Respondent,	:	
v.	:	Priority No. 16
	:	
ROGER FINLAYSON,	:	District Court No. 904905062DA
	:	
Defendant/Respondent,	:	
Cross-Petitioner	:	

BRIEF OF APPELLANT

AN APPEAL FROM A JUDGMENT AND DECREE OF DIVORCE OF THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, UTAH, THE HONORABLE SENIOR JUDGE JOHN F. WAHLQUIST, PRESIDING

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in finding the Hallmark "note" enforceable and a marital debt and charging one-half to the wife?

2. Did the trial court err in finding the vacant lot adjacent to the marital residence was not marital property and in excluding it from the marital estate?

3. Was it error for the trial court to award only $500 of the $7,142.50 in attorney's fees and costs to the wife given the fact that the uncooperative behavior of the husband caused a substantial portion of those fees to be incurred?

4. Did the trial court abuse its discretion in the arbitrary nature of its valuation and division of personal property?

5. Were the trial proceedings properly conducted so as to result in a fair trial to the wife?

IN THE COURT OF APPEALS OF THE STATE OF UTAH

ARVILLA FINLAYSON,	:	
	:	
Plaintiff/Appellant, Cross-Respondent,	:	Case No. 920411-CA
v.	:	Priority No. 16
	:	
ROGER FINLAYSON,	:	District Court 904905062DA
	:	
Defendant/Respondent, Cross-Petitioner	:	

BRIEF OF APPELLANT

APPELLANT'S JURISDICTIONAL STATEMENT

Jurisdiction of this Court is conferred pursuant to the provisions of Section 78-2a-3(g) Utah Code Ann. (1953, as amended) This action involves the appeal of Findings of Fact and Conclusions of Law and a Decree of Divorce signed and entered in the Third Judicial District Court in and for Salt Lake County, State of Utah on March 31, 1992. An Order denying Plaintiff's Motion for New Trial was signed on May 20, 1992. A timely Notice of Appeal was filed on July 17, 1992. A cross appeal was filed on July 1, 1992.

STATEMENT OF THE CASE

This appeal involves a divorce case. The parties were married on September 4, 1964 and separated on or about December 21, 1990.

The parties are parents of four children, only one of which is under the age of 18. In December, 1991, the plaintiff, Mrs. Finlayson, filed a Complaint for Divorce. Subsequently the defendant, Mr. Finlayson, filed an Answer but did not counterclaim. Although the case was assigned to Judge Timothy R. Hanson, in his absence it was tried before the Honorable John F. Wahlquist, retired judge. The trial was held on October 17 and 18, 1991. The parties and other witnesses testified at the trial. At the conclusion of the trial, Judge Wahlquist ruled from the bench as to the division of marital property, custody of the parties' minor child, support obligations, the allocation of debt and attorney's fees. Mr. Finlayson prepared proposed Findings of Fact and Conclusions of Law and Decree of Divorce and a post trial hearing was held on Mrs. Finlayson's objections on February 21, 1992. At the conclusion of that hearing, Judge Wahlquist made additional findings and clarifications and the supplemental Findings, Conclusions and Decree were finally entered on March 31, 1992. On April 3, 1992, Mrs. Finlayson filed a Motion for New Trial. Judge Wahlquist issued a written Memorandum Decision on May 19, 1992 and an Order Denying that Motion was signed and entered on May 20, 1992.

Mrs. Finlayson filed a timely Notice of Appeal on June 17, 1992. A Notice of Cross Appeal was filed by Mr. Finlayson on July 1, 1992.

RELIEF SOUGHT ON APPEAL

Appellant, Mrs. Finlayson seeks the following relief on appeal:

1. An order vacating the trial court's findings and conclusion that the "Hallmark" debt Respondent claimed was owed to his mother was a marital obligation and an order directing the trial court to modify the property distribution to reflect the elimination of this debt.

2. An order vacating the trial court's findings and conclusions that the vacant lot next to the marital residence was the property of Respondent's mother and an order directing that this property be included as a part of the marital estate.

3. An order awarding Appellant an additional $2,099.15 in attorney's fees for fees which were incurred by Appellant in seeking Respondent's cooperation and compliance with prior court orders.

4. In the alternative, an order remanding this matter to the District Court for a new trial before a different trial judge.

5. An Order awarding Appellant all of her attorney's fees and costs associated with this appeal and the defense of Respondent's cross appeal.

6. For such other and further relief as may be appropriate.

STATEMENT OF FACTS

MARITAL HISTORY

The parties were married on September 4, 1964, approximately 28 years ago. They had four children (R-2). One died during

childhood, two are adults and one daughter is still a minor, Trisha, age 16. (R-423) Approximately one year before the marriage, Mr. Finlayson (Roger) decided to open a Hallmark Card shop in a local mall. (R-493) After the marriage, both parties devoted all of their efforts to the success of this business until it was sold in June of 1985. (R-722) They both worked at the shop during the day with Roger keeping the books. (R-541) Mrs. Finlayson (Arvilla) also devoted her full time to the endeavor, as well as caring for the children (at the shop after school and at home in the evenings), and keeping a good home for Roger. (R-436)

For the first five years, the parties lived in an apartment owned by Roger's parents and didn't pay rent. (R-586) Afterwards, they purchased a home in Salt Lake and relied on the store for income to pay the day to day family expenses. In 1985 they sold the store for $250,000.00. ($50,000.00 down and $6,000.00 per month on the remaining balance) (R-592, 722) Roger put the down payment in a local thrift and loan. (R-591, 593) Shortly thereafter that institution failed and to date, the parties have recouped about 70% of their initial deposit. (R-725) In 1988 the parties paid off their home. (R-499) The parties then lived off of the monthly store payment. Roger would direct Arvilla to put $3,000.00 each month in the savings account and keep $3,000.00 in cash, which was then kept in the safe at the marital residence. (R-431) Arvilla did not know very much about the family finances, leaving that pretty much to Roger.

During the marriage, the parties acquired real property, some investments and substantial personal property including tools and guns, a doll collection as well as various automobiles, a boat, a motor home, stock, a cash value in a life insurance policy, and other miscellaneous items. (See Exhibit 7-P, Addendum)

The marriage began to deteriorate and in the first part of 1990, Roger moved from the marital bedroom to a separate room in the home. (R-424) He installed a lock on the door and refused Arvilla access. He also began eating his meals in the room (R-426) and encouraged his 16 year old daughter Trisha to do likewise and to spend all of her time after school in the room with him. (R-425) In March 1990, the parties began discussing a possible divorce. (R-726) In early December 1990, Roger began removing items such as the coin collection (R-513) from the safe and personal property from the home. (R-727, 702) He testified he gave all of his tools to his son Kurt in August 1991. (R-710)

In early December 1990, Roger also told Arvilla that she should get a lawyer and proceed with a divorce. (R-720) Then, without advising Arvilla, he withdrew the following monies from the parties' savings account and paid this cash to his mother claiming they were payments on two loans his father had made to him in 1962 and 1964 respectively. (R-695)

December 11, 1990		$ 9,300.00
December 12, 1990		9,000.00
December 13, 1990		9,500.00
December 14, 1990		38,985.00
	TOTAL	$66,785.00

(See Exhibit 20-D, Addendum)

Upon learning of what Roger was doing, Arvilla withdrew approximately $35,000.00 to prevent further dissipation of marital assets by Roger. (R-413)

PRE-TRIAL DIVORCE PROCEEDINGS

On December 20, 1990, Arvilla filed a Complaint for Divorce (R-2) and secured a restraining order against Roger which among other things, restrained him from further disposing of assets. (R-23) At the January 11, 1991 Temporary Relief hearing, the parties were awarded joint legal custody of Trisha, but because Trisha wished to remain with her father, Roger received physical custody and use of the marital residence. (R-56) Arvilla received reasonable visitation. The home was to be listed for sale with each party to cooperate to effectuate the earliest possible sale. (R-63) Roger then refused to agree on an agent and listing price. (R-77) In March of 1991, the parties finally entered into a further stipulation agreeing to use Todd S. Eagar of Eagar and Company to list and sell the marital residence and the adjacent lot which the parties owned.

Roger began to thwart visitation between Trisha and her mother. (R-77, 38, 452) In fact, in July of 1991 a mutually agreed upon custody evaluator concluded that Roger's actions had been harmful to Trisha and stated:

> It is this evaluator's professional opinion that Trisha Ann Finlayson is in danger of being seriously damaged emotionally and psychologically in her present living arrangements. She has no empathy for her mother's position and has been placed in the positions of acting as her father's surrogate spouse. She tends to his illnesses, shared the problems of his divorce and recreates on weekends with him. She states that she

> works hard at school for him. Both admit to having few friends outside the relationship. (Emphasis added) Trisha should be encouraged to have regular visits with her mother and attempt to re-establish that relationship. (R-116) (Emphasis added)

As of April 30, 1991, Roger had still not listed the home and lot and had failed to make necessary repairs on the home to ready it for sale. (R-77) Even though ordered to do so in March 1991 (R-71) he would not cooperate in listing the vacant lot until June 1991. (R-711)

In June of 1991, Arvilla requested a contempt citation against Roger for his repeated failure to comply with court orders. (R-77) The hearing on that request resulted in Commissioner Arnett recommending compliance with the previous orders. An evidentiary hearing in the contempt issue was to be held before Judge Hanson. Commissioner Arnett also reserved the issue of Arvilla's request for attorney's fees related to Roger's non-compliance.

Arvilla filed a Certificate of Readiness for Trial in June 1991, (R-86) and the matter was ultimately tried before Judge Wahlquist, a retired judge substituting for Judge Hanson on October 17 and 18, 1991.

TRIAL

At trial, Arvilla, Roger, the parties son Kurt and Roger's mother, Mina Finlayson, testified. Ms. Donovan, Arvilla's counsel, testified by stipulated proffer as to Arvilla's fees. (R-531) Mr. Russell, Roger's counsel, did not cross examine Ms. Donovan nor did he testify as to his fees. (R-533)

The major issues over which there was substantial dispute were:

1. How were two "notes" written by Roger to his parents in 1962 and 1964 respectively to be treated? i.e. If legitimate, were these marital debts to be charged against the marital estate?
2. Was a vacant lot next to the marital residence and transferred to the parties in 1978 with Roger as trustee and Roger's mother as settlor, marital property or was it still property of Roger's mother?
3. How was the substantial personal property, acquired during the marriage, to be valued and distributed?
4. How was Arvilla to be assured of meaningful access and visitation to Trisha?
5. What amount of fees should Roger pay Arvilla because of his repeated failures to obey court orders?

"Hallmark and Rent Notes"

In 1962, two years before the parties married, Roger claimed his father had loaned him $14,000.00 to start the Hallmark card shop. He said he prepared and signed a "note" (Exhibit 18-D, Addendum) and gave it to his father. The "note" did not contain a principal amount nor a due date. It provided only that the unspecified amount advanced would bear interest at 6% per annum. Roger's mother was not present or involved in the transaction. (R-538) Roger gave the document to his father (R-699). His father died in 1969 and it was just before this divorce began that Roger

secured possession of the "note" from his mother (R-582). He said he'd forgotten about it. (R-587) Attached to the note were Roger's calculations as to the total amount of principal and interest due through trial. i.e. $71,672.13 (R-585). Roger did not introduce any documents reflecting the initial claimed loan (R-696)

Both Roger and his mother acknowledged Arvilla had no knowledge as to the financial details of the loan (R-541, 698) and in fact, they didn't want her involved. (R-558) Arvilla said she knew Roger had received some money from his father but didn't know much else. (R-444, 525) She recalled Roger's parents having a history of making gifts to their two sons. (R-484, 522)

During the marriage, Arvilla had asked Roger to make certain that he and his mother had resolved this issue so that their relationship would continue to be good and Roger would tell Arvilla it was none of her business. (R-496)

On September 4, 1964, the day of the parties marriage, Roger claimed he prepared and signed a second "note" (Exhibit 19-D Addendum) (R-586) and gave it to his father to repay him any rents which were to accrue while the parties were living in the apartment owned by Roger's parents. (R-586) Like the first "note", Roger and his mother said Arvilla was not involved. (R-558) Arvilla knew nothing about it (R-698); it did not surface until trial (R-582). Attached to it were Roger's calculations that the parties owed a total of $49,778.33 and nothing had ever been done by Roger's parents to collect on it. (R-545)

For over 26 years nothing was paid on these "debts" and it was not until December 11, 1990, (ten days before this divorce action was filed) that Roger paid any monies to his mother on these "debts". (R-541) Between December 11 and 14, 1990 he withdrew a total of $66,785.00 from the parties savings account to "repay" these "debts". (R-599, 695)

At trial, Arvilla argued that neither of these "debts" should be charged against the marital estate. She argued, in her Trial Brief, that these "debts" in any event were invalid and raised adequacy of terms, statute of limitations, estoppel, and fraudulent conveyance defenses (R-112). Roger argued that these "debts" were marital obligations and should be repaid to his mother and denied that these would ever come back to him and the sole surviving heir of his mother's estate (his only brother, Roland, had died). (R-716)

With this evidence before it, the trial court did something very unusual but most erroneous. It found that the "Hallmark note" was a marital obligation and that Roger's mother should be repaid $14,800.84 in principal and $25,752.87 in interest for a total of $40,553.74. (R-166-167) It then found that Arvilla could avoid paying the "rent note" by raising the statute of limitations defense and <u>did not</u> include it as a marital obligation. (R-157)

<u>Vacant Lot</u>

In the sixties, Roger's parents acquired a vacant lot next to Roger's and Arvilla's marital residence. (R-642) Evidently, Roger's father had wanted to build a home on the ground into which

he and his wife would ultimately move. (R-551) Roger's father died in 1969 (R-562) and Roger's mother elected not to go forward with this building plan. (R-551) The lot was then transferred into a Living Trust established and created by Roger's mother, Mrs. Finlayson, for her benefit with Roger serving as Trustee. In 1978, she and Roger caused a Warranty Deed to be prepared which both signed as grantors in their respective capacities, conveying this lot to Roger and Arvilla as tenants in common. (Exhibit 31-P, See Addendum) It was delivered and recorded at that time. (R-562, 563)

Since 1978, Roger and Arvilla paid all of the taxes on the lot, (R-554, 563, 650) weeded it and maintained it. (R-650) Roger and his mother testified the transfer was only to allow Roger to sell the property. (R-650, 552) The property had never been listed for sale and in the last 13 years, Roger said he received only one offer on it. (R-651) Arvilla said she had always understood the lot to have been given to Roger and her by his mother. (R-501) The issue of ownership was raised by Roger only after this divorce had commenced. Arvilla claimed the lot was marital property. (R-457) Roger claimed it was still owned by his mother. (R-652) The trial court again agreed with Roger and ordered it excluded from the marital estate and returned to Roger's mother. (R-155, 156) The court relied solely on the testimony of Roger and his mother in making this decision. (R-293)

Personal Property

During the marriage the parties had acquired substantial items of personal property requiring valuation and division. (See

Exhibits 8-P, 11-P, 12-P, 26-D) Because of the problem's Arvilla had with Roger while the divorce was pending, she requested that the court aid her in valuing and dividing this property. (R-731) Roger said he thought the property should be divided by "flipping a coin". (R-715) At the conclusion of the evidence, the trial court ruled from the bench and advised the parties that it was not going to deal with this issue other than to have his bailiff "flip a coin" and the party winning the "flip" could select the first room of furniture with this procedure to then alternate until all of the rooms had been selected. (R-338)

Unnecessary Attorney's Fees

Ms. Donovan, by agreed proffer, testified that Arvilla had incurred a total of $7,142.50 in attorney's fees and costs and that in her opinion $2,599.15 of those fees were incurred solely as a result of the uncooperative attitude of Roger. (R-552) She was not cross examined on this. With this undisputed evidence before it, the trial court ruled that Arvilla should receive only $500.00 towards her fees based upon Roger's failure to cooperate in listing the home (R-160) and the problems he caused with visitation (R-351).

POST TRIAL PROCEEDINGS

After trial, Roger's counsel prepared proposed Findings and Conclusions. Arvilla's counsel objected and the trial court, at a hearing on those objections, supplemented the original proposed Findings. (R-358 to 392)

Arvilla then made a Motion for New Trial claiming a number of errors and irregularities. (R-205) The court issued a Memorandum Decision denying that Motion (R-282 to 298) and Arvilla then timely filed this Appeal. (R-315)

SUMMARY OF ARGUMENT

POINT I

It was correct for the trial court to conclude that the 1964 "Rent Note" was not a legally enforceable marital obligation. It was incorrect for the trial court to conclude that the 1962 "Hallmark Note" was a legally enforceable marital obligation and half of which was chargeable to Arvilla. It is totally unequitable to require Arvilla to be responsible for a 28 year old obligation that Roger's mother said "was none of her affair and about which she had little if any knowledge".

On a strictly legal basis both notes were barred by the Statute of Limitations. Also under these facts Roger's parents were barred by the Doctrine of Laches from collecting on the debts and both Roger and his mother were estopped by their own conduct from trying to enforce these obligations against Arvilla. Finally, the trial court gave relief to Roger's mother which she could not have achieved by filing an action of her own.

POINT II

The evidence and particularly the objective evidence, presented to the trial court in relation to the vacant lot overwhelmingly supports a finding that the lot was given to Roger and Arvilla by Roger's mother in 1978. There was insufficient

evidence to support a finding that Roger and Arvilla held the property in trust for Roger's mother. Based on the successful marshalling of the evidence as is required by Arvilla, this Court under its equitable powers should make its own findings and order that this lot be included as a part of the marital estate.

POINT III

Arvilla incurred $7,142.50 in attorney's fees and costs through trial. Arvilla's attorney testified that, in her opinion, $2,599.15 of the fees were incurred unnecessarily because of Roger's failure to follow court orders and cooperate. This testimony was undisputed. The trial court found that Roger had thwarted visitation and failed to cooperate in this listing of the marital residence. In spite of this, the Court only awarded Arvilla $500.00 in attorney's fees. This minimal award when viewed in light of the undisputed evidence as to the amount of additional fees and Roger's recalcitrance constitute an abuse of the trial court's discretion in awarding attorney's fees.

POINT IV

The trial court acted in an arbitrary and capricious manner in the way it conducted the trial, made its findings and conclusions and valued and divided property. In particular:

1) The trial judge slept during portions of the trial and consequently "missed" important evidence.
2) The trial judge made inconsistent findings on material issues not supported by the evidence.
3) The trial court arbitrarily assigned values to property.

4) The trial judge ordered that personal property would be divided by the "flip of a coin".

All of the above prevented Arvilla from receiving a fair trial.

POINT V

Because Arvilla was required to appeal the trial court's ruling to prevent substantial injustice to her and because Roger will have funds available to him from his share of the home proceeds, Arvilla is entitled to be awarded her attorney's fees and costs incurred in connection with this appeal and cross appeal.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REQUIRING ARVILLA TO ASSUME ONE-HALF OF A 28 YEAR OLD "DEBT" WHICH ROGER CLAIMED HE OWED HIS MOTHER.

At trial, Roger produced two documents which he claimed represented 26 and 28 year old obligations he said he owed to his parents. He asked the trial court to declare these to be marital debts which would then be paid to his mother from marital funds. He claimed that $71,672.13 was owed on the "Hallmark note" (R-585) and that $49,778.33 was owed on the "rent note" (R-589) for a total of $118,632.32. (R-598). A week before this action was filed, Roger made the four separate payments in cash on these obligations to his mother in the sum of $66,785.00. (R-599) He asked the Court to require marital funds to repay the remaining $51,847.00. (R-599) Arvilla claimed these were not marital obligations and

even if they were, they were unenforceable against she and her husband.

In analyzing these respective positions, the trial court did a strange thing. It ruled correctly in concluding that the "rent note" should not be a marital obligation and that even if it was, the parties had valid statute of limitation defenses which would preclude Roger's mother from collecting anything from the parties.

In so holding on the "rent note", the court found:

> The separate note from Defendant to his parents for rental amounts owed to them for marital housing expenses is held unenforceable, and additional amounts paid to Mina from joint marital funds shall be charged to Defendant as a receipt of marital funds, which calculations are set forth in Finding paragraph 8, above. The Defendant's father, for reasons not fully disclosed in the evidence except by circumstantial inference, wished to maintain control of the store and may or may not have regarded it as a potential asset owned by himself. There is no fixed amount, but at the time the note was made, it was meant to cover inventory, and readily determinable by the parties, but held some possible dispute with creditors. There has been no payment on this amount, but it has been discussed throughout the marriage by the parties. The son should not be forced to plead with the statute of limitations against his mother. The mother holds a lien for that inventory as against these litigants. The court treats these two obligations differently because the store loan is attributable to the creation of marital property which the parties have enjoyed, but the rental loan yielded no asset subject to division,. With reference to the "monies for rent" note, this loan was made during the marriage, with fixed interest at six percent. It was intended eventually that it would be paid. There was no payment on it. The statute of limitations has run. The wife has the right to plead the statute of limitations. In justice and equity, she should be regarded as free of the debt. Payments on that debt are considered voluntary by Defendant, and come from his share. Accordingly, Defendant alone shall be responsible to discharge the note relating to housing expenses, holding the Plaintiff harmless therefrom. (R-185) (Emphasis added)

The language emphasized above is the correct analysis as to how both of these "notes" should have been dealt with.

However, the "Hallmark note" was handled in a totally opposite and inconsistent way when the trial court erroneously attempted to create a distinction between the two notes without a difference and found as follows on the "note" that was signed two years before the "Rent note".

> Prior to the marriage, Defendant borrowed funds, in the amount of $14,800.84, from his parents to open a Hallmark store in the Cottonwood Mall, which was operated by Defendant prior to the marriage and by both parties during the marriage, and was later sold during the marriage. Said obligation was evidenced by a written promissory note, dated September 4, 1962 with stated interest of 6% per cent per annum, but without reference to simple or compound interest. While the court finds both parties substantially contributed to the operation and success of the business, the court finds that although the business and its proceeds were in large part marital property, equity requires that the originally borrowed set-up funds be repaid by the parties from marital assets. The Court also finds that without this loan from Defendant's parents, the parties would not have had the opportunity to engage in and built the business, and reap its benefits. Thus, Defendant's repayment of funds to his mother in late 1990 were properly paid by marital funds held in a joint savings account. The Court finds simple interest to be applicable, and that interest accrued in the amount of $888.03 per year for 29 years ($25,752,87 total interest through trial), which, added to the principal amount, equals a total obligation of $40,553.74. Defendant made several repayments on said note in 1990. (R-184)

In attempting to analyze the trial court's reasoning in making what is simply an inconsistent and unjustified distinction, the following facts should be kept in mind.

1. Each "note" was prepared by Roger.

2. Each "note" was signed only by Roger.

3. At trial, Arvilla questioned the authenticity of both documents after "surfacing" some 26-28 years after the fact.
4. Neither "note" states a sum.
5. Neither "note" has a payment date or language that it is payable "on demand".
6. Roger produced no documents to substantiate he had received any monies from his father. (R-696)
7. Roger's family didn't want Arvilla involved in these transactions. (R-541, 558, 698)
8. No payments were made on either "note" by Roger until the start of this action. (R-696)
9. No demands for payments were made by Roger's parents. (R-545, 586)
10. Roger said Arvilla never really knew how much was owed. (R-698)

The trial court erred in finding the "Hallmark note" to be a marital obligation subject to repayment to Roger's mother. The reason for this error is that neither "note" was a legally enforceable obligation against either party because both debts were subject to valid Statute of Limitations and "laches" defenses. In addition, the conduct of Roger and his mother, over the last 26 years, amounts to an estoppel which would prevent either of them from recovering any amounts for these "debts" from Arvilla.

It is well established that trial courts have considerable discretion in dividing marital property and allocating marital

debt. Section 30-3-5 Utah Code Annotated (1953 as amended). Arvilla recognizes and acknowledges that principle. However, the facts of this case clearly reflect that the trial court abused that broad discretion in finding that the "Hallmark Note" was a "marital debt", one half of which was chargeable to Arvilla and for that matter in finding that the "debt" was an enforceable debt against either party.

First, neither "note" set forth a sum certain as to what the obligation was or what "the debt" would ultimately be. Both Roger and his mother acknowledged on several occasions during their testimony that these loans "were none of Arvilla's business" (R-541, 558). Arvilla was never involved in either transaction and Roger admitted that she was never informed of any specific amounts, Roger, at trial, claimed were due (R-698).

Under these facts it was unconscionable for the trial court to impose responsibility on Arvilla to repay one half of a 28 year old "debt" about which she knew little, if anything. In addition, the bulk of the marital estate was limited to proceeds which would be generated from the sale of the parties home and vacant lot. Arvilla was unskilled, and by the trial court's own finding capable of earning only a minimum wage. She was 49 years old. Roger was the sole surviving child of his mother.

For the trial court to reduce the marital estate by $40,533.74, the amount the trial court found to be due on the note after 28 years and to require that that sum be paid to Roger's 92

year old mother was patently unfair and contrary to all principles of equity and fairness.

Putting equity aside for the moment, it was also an error in law for the Court to find the "Hallmark Note" an enforceable legal obligation. First, the Statute of Limitations for enforcing any such obligation by Roger's mother had long run. Section 78-12-23 Utah Code Annotated (1953 as amended) provides that any action to collect a debt based upon an "instrument in writing" must be brought within six years. Roger's parents never brought an action to collect either "note" over a 26-28 year period. The trial court correctly recognized that failure on the "rent note" and simply ignored that failure on the "Hallmark note". To do so was reversible legal error.

Second, the failure of Roger's parents to take any action whatsoever to collect on these notes for this lengthy period of time invokes the "laches" bar prohibiting them from collecting this obligation from either Roger or Arvilla. In Plateau Min. v. Utah Division of State Lands, 802 P.2d 720 (Utah 1990) the Court defined the Doctrine of Laches as follows:

> Laches bars a recovery when there has been a delay by one party causing a disadvantage to the other party. Papanikolas Bros. Enters. v. Sugarhouse Shopping Center Assoc., 535 P.2d 1256, 1260 (Utah 1975). Laches has two elements: (1) lack of diligence on the part of the claimant and (2) an injury to the defendant because of the lack of diligence. Id. at 1260.

Id. at 731.

Clearly, Roger's parents' delay in collecting the "debt" was, at a minimum, a lack of diligence which caused Arvilla substantial injury in the form of responsibility for one-half the "debt".

Third, both Roger and his mother are estopped from seeking repayment of any of these monies from Arvilla. In Brixen & Christopher, Arch. v. Elton, 777 P.2d 1039 (Utah App. 1989) this Court held:

> Estoppel is an equitable doctrine which precludes parties from asserting their rights where their actions render it inequitable to allow them to assert those rights. Estoppel requires proof of three elements: (1) a statement, admission, act, or failure to act by one party inconsistent with a later asserted claim; (2) the other party's reasonable action or inaction based upon the first party's statement, admission, act, or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate the statement, admission, act, or failure to act.

Id. at 1043. See also CECO Corp. v. Concrete Specialists, Inc., 772 P.2d 967, 970 (Utah 1989); Hunter v. Hunter, 669 P.2d 430 (Utah 1983).

The estoppel elements set out in Brixen, supra, are present in this case.

1) Both Roger and his mother's testimony indicating that these "loans" were none of Arvilla's affairs; Roger's failure to pay anything on these debts until one week before the divorce action was filed and Roger's mother's failure to make any demand for payment over a 26 year period are unquestionably statements and failures to act

inconsistent with the claim for payment they made at trial.

2) Arvilla's assumption that no such debt existed or that the same had been taken care of by Roger was reasonable given the long passage of time, the history of gift giving by Roger's parents and Roger's dominance and control over the family finances; and,

3) Arvilla would be damaged to the extent of over $20,000.00 if Roger and his mother were allowed to now claim the "debts" are due and owing.

Roger and his mother are estopped from claiming Arvilla is in any way obligated on these obligations.

Finally, the actions of the trial court in enforcing the "Hallmark note" were entirely inappropriate because, in so doing, it allowed Roger's mother to secure legal relief from an equitable action to which she was not a party. Furthermore, it allowed Roger's mother to secure relief which could not have been obtained in any independent action filed by her against Roger and Arvilla for the same reasons set out above.

The trial court correctly concluded that the "Rent note" was not a marital obligation chargeable against Arvilla. It incorrectly concluded that the "Hallmark note" was a marital obligation chargeable against Arvilla. That portion of the trial court's order should be vacated.

POINT II

THE TRIAL COURT ERRED IN FINDING THAT THE VACANT LOT NEXT TO THE MARITAL RESIDENCE WAS NOT MARITAL PROPERTY AND IN REQUIRING THAT THE PARTIES QUIT CLAIM THEIR INTEREST IN THIS PROPERTY BACK TO ROGER'S MOTHER.

In 1978 the parties received a Warranty Deed to the vacant lot next to the marital residence. The deed was signed by Roger as trustee, and his mother as settlor, and conveyed this lot to Roger and Arvilla as tenants in common without any reservations. (Exhibit 31P - Addendum) Arvilla included this property as part of the marital estate. Roger claimed the property was his mother's. The trial court erroneously agreed with Roger and made the following finding.

> The Court finds that during the marriage (in 1978) Mina Finlayson, the Defendant's mother, and/or a trust related to her, deeded real property located at 4946 Highland Circle, Salt Lake City, Utah, jointly to the parties, which deed was duly delivered and recorded. Said property is a vacant lot located adjacent to the marital home, and was owned by Mina Finlayson with her husband, who died prior to the transfer of record title. From the testimony of Mina Finlayson and other witnesses at trial, the Court finds that Mina had, at the time of the transfer to the parties, decided to sell the property and as a result, deeded the property to the parties as trustees, to maintain and attempt to sell the property for her. The Court further finds that said transfer was without donative intent, that no equitable interest passed to the parties, and that Mina's intent was solely to allow the parties to act as her agents in maintaining and selling the lot. Marital funds were used to pay the property taxes for such parcel as they came due. The Defendant did not request reimbursement for the taxes from his mother because of the two note obligations owed to her (more fully described in Finding paragraph 13, below) were of a substantial nature and had not yet been repaid. All dealings with the property have occurred since the marriage. There has been perhaps six thousand dollars paid in taxes, but there has been no interest paid on any other debt. The Court regards this as a wash. As such, the Court finds that said real property

is not within the marital estate. Each of the parties should be ordered to execute a Quit-Claim deed in favor of Mina Finlayson, her successor, or her designated agent. (R-183-184)

It is also well established that a party challenging any finding by a trial court must marshall all of the evidence in support of that finding and then demonstrate that the evidence is inadequate when weighed with other contrary evidence. [See Crouse v. Crouse, 817 P.2d 836 (Utah 1991).]

The evidence the trial court relied on in support of its finding that the vacant lot belonged to Roger's mother was inadequate when considered in light of all the other evidence which showed that the parties, not Roger's mother, owned this lot.

The evidence in support of the finding was:

1. Roger's testimony that his mother never gave the lot to the parties. (R-642-650)
2. Roger's mother's testimony that she never intended to give the lot to the parties. (R-552-555)
3. The parties son Kurt's testimony that he thought the lot had not been given to the parties. (R-568) [It is important to remember while these proceedings were pending, Roger had alleged giving his son guns and all of his extensive collection of tools. (R-710)]

The evidence against the finding was:

1. The language of the Warranty Deed itself. (Exhibit 31-P Addendum)

> Roger W. Finlayson, Trustee of Mina W. Finlayson, Revocable Trust, and Mina W. Finlayson Settler of the Mina WK. Finlayson

Trust, Grantors of Salt Lake City Utah hereby convey and warrant to Roger W. Finlayson and Arvilla K. Finlayson, his wife, Grantees. . . (Exhibit 31-P)

2. The fact that both Roger and his mother signed this deed.

3. The fact that the transfer was made in 1978 - 13 years ago. (R-644)

4. The fact that since the transfer, Roger and Arvilla paid over $6,000.00 in real estate taxes on the ground. (R-554, 563, 650)

5. The fact that no evidence was presented showing that Roger had ever listed the property for sale for his mother.

6. The fact that in 13 years, Roger testified only one offer to purchase the lot had been received. (R-651)

7. The fact that during the course of these proceedings, Roger stipulated that the vacant lot could be listed for sale. (R-68)

8. The fact that Roger's parents throughout the years gave Roger money and did not request repayment. (R-543)

9. The fact that Roger, as trustee for his mother, had complete authority to sell this property without the need for further conveyance in 1978.

10. The fact that the 1978 deed was delivered to Roger and Arvilla and recorded shortly after delivery.

11. The fact that the parties maintained, weeded and kept up the property since its transfer to them in 1978. (R-650)

12. The fact that the issue of ownership was brought up only after Arvilla had commenced this divorce against Roger.

13. The fact that while Roger's father was living, there had been discussions of Roger's parents' building a home on this lot. When he died in 1969, Roger's mother said she no longer wanted to pursue this project. (R-551)

14. The fact that Arvilla believed she and Roger had owned the lot since 1976 (R-47) and that it was her understanding that she and Roger could sell the lot and keep the proceeds. (R-90, 91)

15. The fact that Roger's mother had had no involvement with the property since 1978. (R-563)

16. The fact that Roger was the sole surviving child of his mother. (R-716)

Clearly, the foregoing demonstrates objectively that the 1978 transfer was a gift to Roger and his wife, Arvilla. The subjective testimony of interested parties is the only evidence which supports the erroneous conclusion that it was not a gift.

In determining a grantor's intent as it relates to the making of a gift, it is well established that the trier of fact must consider all of the circumstances surrounding the making of a gift. [See Stanley v. Stanley, 97 Utah 520, 92 P.2d 465 (Utah 1939) and Mower v. Mower, 64 Utah 260, 228 P.2d 911, 914 (Utah 1924).]

It is not sufficient to consider only the testimony of parties having a direct interest in either upholding or challenging the gift. In this case, the trial court simply ignored the objective

credible evidence related to this transfer and accepted the subjective testimony of very interested persons in finding that the transfer of this lot was not a gift to Roger and Arvilla. In so doing, the trial court excluded a significant marital asset all to Arvilla's detriment.

It is a well established principle of appellate law that an appellate court, in an equitable action such as divorce, can review de novo all of the evidence presented at trial and make its own findings and conclusions if it chooses to do so and if equity and justice require. [See Wright v. Wright, 586 P.2d 443 (Utah 1978) and Wall v. Wall, 700 P.2d 1124 (Utah 1985).]

The Findings and Conclusions of the trial court related to the lot should be vacated. All the evidence related to the vacant lot should be reviewed by this Court and this Court should enter its own findings to prevent a substantial injustice to Arvilla in eliminating this substantial asset from the marital estate.

POINT III

THE TRIAL COURT ERRED IN AWARDING ARVILLA ONLY $500.00 OF THE $7,142.50 IN ATTORNEY'S FEES AND COSTS REQUESTED WHEN ROGERS'S ACTIONS/ INACTIONS CAUSED HER TO INCUR A SUBSTANTIAL PORTION OF THOSE FEES.

When a party to a divorce action acts or fails to act in such a way as to cause the other party to incur unnecessary attorney's fees, it is most appropriate and permissible for the trial court to require the recalcitrant party to reimburse the other those additional fees. [See Porco v Porco 752 P. 20 at 368 (Utah App. 1988)]

For a court not to require such reimbursement allows the uncooperative party to unfairly take advantage of the other party. Such an approach sends a clear message to the offending party that such tactics and behaviour are permissible without fear of sanction.

In this case, the record is filled with incidents of Roger's behavior demonstrating lack of respect for the principles of fairness, orders of the court and the judicial process. For example;

1. Just before the divorce was filed, he withdrew over $66,000.00 from the parties joint bank account (R-695), removed items from the safe and property from the home, requiring Arvilla to secure a Restraining Order. (R-22)
2. He attempted to manipulate his daughter to cause her to be alienated from her mother. (R-77, 452, 38, 351)
3. He would not cooperate in the listing of the marital residence and lot. (R-77, 160)
4. He would not repair the house and make it ready for sale. (R-77, 458)
5. He would not cooperate in encouraging visitation. (R-707)
6. Even after trial, he continued to resist selling the house; wouldn't repair it and make it ready for sale; he wouldn't transfer titles to vehicles; he refused to cooperate in selecting a family counsellor to work with the parties daughter; and he continued to be

uncooperative in dividing personal property and in refusing to execute documents necessary to divide the parties stock, all as he was ordered to by the court. (R-174-180)

During the trial, Arvilla testified extensively about the problems she had encountered in getting cooperation from Roger. (R-429, 448, 452, 458, 460, 492, 727, 731) Arvilla's attorney, in testifying as to fees requested, substantiated her client's testimony and introduced a Request for Fees (Exhibit 16-P, Addendum) and backup documents (Exhibit 17-P, Addendum) which reflected what Ms. Donovan concluded were $2,599.15 in unnecessary fees caused by Roger's actions. Ms. Donovan's testimony in that regard was not challenged. (R-53)

Even Roger admitted that he had been "hard headed and prolonged the case" (R-690) and that he really didn't want to immediately sell the home. (R-711-712). Roger's attorney in his closing admitted his client had been obstinate. (R-746)

With all of this evidence before it, the trial court in its ruling from the bench stated:

> The Court believes there has been unnecessary proceedings brought on by his failure to let her see the child and this type of thing, so that he must make a contribution of $500.00 to her fees because of those items. (R-351)

In its Findings the trial court stated:

> Defendant should be ordered to pay plaintiff's attorney's fees in the sum of $500 and the same should be awarded due to legal expenses incurred in pursing the sale of the home and other issues . . . (R-160)

And, finally, in its Memorandum Decision denying Arvilla's Motion for New Trial, the trial court again noted this recalcitrance when it stated:

> In fact, the evidence was strong that he frequently did not carry out intentions . . . his or other people's as for example the sale of the house as ordered by the Court. (R-293) (Emphasis added)

While the trial court recognized Roger's noncompliance, the fee award it made was wholly inadequate given the uncontroverted evidence of the additional unnecessary fees and the fact that Roger would have the financial means available to pay those fees from his share of the home proceeds when the home was sold.

Arvilla should be awarded an additional $2,099.15 in attorney's fees for the additional, unnecessary legal fees Roger caused her to incur. This sum reflects a $500.00 credit for the initial award of fees which the trial court made.

POINT IV

> THE TRIAL COURT ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER IN THE WAY IT CONDUCTED THE TRIAL, MADE ITS FINDINGS AND CONCLUSIONS AND ORDERED THE PROPERTY DISTRIBUTED, CONSEQUENTLY DEPRIVING ARVILLA OF THE COMPLETE, FAIR AND IMPARTIAL TRAIL TO WHICH SHE WAS ENTITLED.

Arvilla requests this Court to consider the relief requested in this Point IV only if this Court decides not to grant the relief she has requested in Points I, II and V of this Brief.

The record in this case is substantial, in part due to Roger's failure to comply with court orders, but also in part due to the way the trial judge conducted the trial, and made his findings and final orders.

Following the trial court's ruling from the bench and entry of Findings and Decree, Arvilla made a Motion for New Trial. (R-605) One of the reasons for requesting a new trial was the fact that the trial judge had slept during portions of the trial which involved witness testimony. (R-187) That claim was supported by an affidavit filed by Sara Ryan (R-200) a person who sat in the courtroom throughout the trial. Roger filed a counter affidavit claiming the judge did not sleep. (R-264)

The judge in responding to this allegation in his Memorandum Decision (R-282) didn't deny that he may have slept but stated "I do not recall sleeping on this case." (R-282) He then goes on to state that he felt he hadn't "missed" anything, and concludes by stating "The contest was joined but there was very littl (sic) conflict in the testimony on the major issues." (R-282-283)

The record reflects otherwise. For example, Roger testified he prepared the "two" notes, (Exhibits 18-D and 19-D) and that all of the handwriting on the "notes" was his. (R-170) Judge Wahlquist, in his Memorandum Decision denying the Motion for New Trial, states in relation to the "Hallmark note" that,

> "This note is written in the handwriting of the father, who has been dead for many years. (R-291)

He also states:

> "The father was worried about losing the money if the new venture failed so he wrote out a note which was signed by the son . . . (R-291)

Unfortunately, no such evidence exists in the record and if the court was in error on such a significant issue, this error alone is grounds for a new trial.

The trial court also acted in a most arbitrary and capricious way in the manner it arrived at values of certain items of property and in the way it ordered them divided. Arvilla has included in the Addendum to this Brief, a complete transcript of the Judge's Ruling from the Bench and his Memorandum Decision denying the Motion for New Trial. (R-322-355) Arvilla respectfully urges this Court to read those documents in their entirety to gain the full impact as to how the trial court's final decision was reached. (This Court's attention is also directed to the transcript of the hearing on Arvilla's Objection's to Findings (R-356-392) for further examples of the capriciousness and arbitrariness of the trial court's method of resolving this case.)

For example, during the ruling, the issue of the value of a diamond not mentioned during testimony was raised. Neither party knew what it was worth. To resolve that, the court stated:

> THE COURT: just an arbitrary point, per se, the diamond is worth $250.00, and she has to take it unless he offers her more within 24 hours. She has to take it at two fifty unless he bids more, then it will go to the highest bidder. (R-332)

Arvilla testified of her concerns about being able to divide up the personal property because of the uncooperative attitude demonstrated by her husband. (R-731) Both parties submitted lists requesting that each be awarded certain items of property.

(Exhibits 8-P, 11-P, 12-P and 26-D) In spite of this, the trial judge ordered the personal property issue resolved as follows:

> THE COURT: Suppose I do it this way: We'll have a throw of a coin. One of you choose one room, and another choose another room until I've run out of rooms, and that's the was the division is. The furniture -- be ready to play that way.
>
> MS. DONOVAN: Each party select a room, and takes all the furniture in that room?
>
> THE COURT: I'm going to start this action in a minute. I'm going to throw up a coin, and have defense counsel throw the coin. Plaintiff's counsel call heads or tails. If she's correct in her call, then she makes a choice for her client -- the first choice of room. Then it will be the defendant's choice, and the plaintiff's choice, and then the defendant's choice until I run out of rooms. And then I'll count the garage as one room. But the tools are already gone. You understand what we're going to do?
>
> MS. DONOVAN: I think so, Your Honor.
>
> THE COURT: You've got the rules?
>
> MS. DONOVAN: I think I've got the rules.
>
> MR. RUSSELL: I think I'm with her.
>
> MS. DONOVAN: You're including the garage?
>
> THE COURT: You're not excluding the garage. The garage counts on the end, but the tools are gone.

The flippancy of the trial court regarding dividing personal property is clearly demonstrated by the trial court's statement in response to Mr. Russell's question about dividing items such as the fireplace insert, utility trailer, cement mixer, riding lawnmower, mulcher, snowblower and canoe, when Judge Wahlquist said,

> "You can work that out on <u>your picnic</u>." (R-345) (Emphasis added.)

These litigants were entitled to better treatment than what was afforded them by the trial court in relation to an issue which was important to both of them. The record on its face reflects an inattentive trial judge who acted in an arbitrary and capricious manner in rendering his decision and without question provides grounds for a new trial.

As stated at the beginning of this Point, if Arvilla is not granted the relief she has requested in Points I, II and V of this Brief, then she requests she be granted a new trial before a different judge.

POINT V

ARVILLA IS ENTITLED TO BE AWARDED THE ATTORNEY'S FEES AND COSTS INCURRED BY HER IN THE MAINTENANCE OF THIS APPEAL AND THE DEFENSE OF ROGER'S CROSS APPEAL.

Section 30-3-3 Utah Code Ann. (1953 as amended) is the statutory basis for an award of attorney's fees in divorce actions. It states that:

> The Court may order either party to pay to the clerk a sum of money . . . to enable such party (adverse) to prosecute or defend the action.

Id. (Parenthetical language and emphasis added)

This section has been interpreted to apply to attorney's fees incurred both at the trial and appellate levels. See Dahlberg v. Dahlberg, 77 Utah 157, 292 P.214 (1930) Carter v. Carter, 584, P.2d 904 (Utah 1978) and Maughan v Maughan, 770 P.2d 162 (Ut. App. 1989).

Clearly, the statute gives this Court the authority to award Arvilla her attorney's fees to allow her to "prosecute" the appeal to a successful resolution in her favor and also to allow her to "defend" Roger's cross appeal.

This Court has also consistently held that a party to a divorce action who is successful on an appeal, is entitled to an award of attorney's fees and costs incurred in connection with maintaining the appeal. (See Crouse v Crouse, 817 P.2d 839 (Ut. App. 1991)

Points I, II, III and IV of this brief clearly demonstrate that the trial court committed significant errors in accepting the positions argued by Roger in connection with treating the Hallmark "note" as marital debt; in excluding the undeveloped lot as marital property; in failing to award appropriate attorney's fees, and in arbitrarily dividing and valuing the personal property. In so ordering, the trial court substantially diminished the marital estate so as to give Arvilla no other alternative than to appeal to this Court to correct these inequities.

This Court should award Arvilla all of her attorney's fees and costs related to pursuing this appeal and defending Arvilla's cross appeal and the matter should be remanded to the trial court before a different judge for a determination of the same and entry of an appropriate judgment against Roger.

CONCLUSION

It is always most unfortunate for parties to endure the emotional and financial trauma of divorce. It is even more

unfortunate when one of the spouses to a divorce action attempts not only to protect his/her rights, but overreaches in an attempt to achieve a resolution unfairly weighted in his/her favor. Such was the case in this matter.

The record reflects that Roger continually failed to cooperate with the directives of the Court. He attempted to taint the relationship between Arvilla and her daughter; he thwarted visitation, and he would not cooperate in the listing, sale and repair of the marital residence and adjacent lot.

The record also demonstrates that Roger tried to "cut the pattern to fit the cloth" so that he would ultimately end up with the lion's share of what these parties had jointly worked for during their 27 year marriage. He resurrected 26 year old plus obligations he claimed were owed to his mother; he claimed a lot given to Arvilla and him over 13 years ago really wasn't a gift but rather was property of his mother; he gave marital property away; and incredibly, he asked the court to award him alimony and require Arvilla to pay him $15,751.00 in property settlement. (R-687)

Perhaps the flavor of Roger's attitude and actions can best be captured in reviewing the most perceptive comment made by Ms. Donovan in her closing argument:

> I think the court can see what's happening. By the time we're through with this case there's no property left. Either his mother owns it, his son owns it, or he's given it away, or he's taken it out of the estate. That's not fair after a twenty-seven year marriage. (R-740)

It was the trial court's duty to recognize that the position urged by Roger was not fair to both parties. The trial court did not fulfill that duty when it required the "Hallmark note" to be paid from marital funds; ordered the vacant lot transferred back to Roger's mother and failed to require Roger to reimburse Arvilla for all of the unnecessary attorney's fees Roger caused her to incur.

Arvilla respectfully requests this Court to correct the errors of the trial court and grant her the relief requested on page seven of this brief.

RESPECTFULLY SUBMITTED this 7th day of December, 1992.

DART, ADAMSON & DONOVAN

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ADDENDUM

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P R O C E E D I N G S

October 18, 1991

THE COURT: The court's going to attempt to render a decision on most items now. It may be that there will be some items that will not be covered. I want to do it while the attorneys are here. Please keep your record, and I'll ask the clerk to keep the record, and you can keep the record too, and that is of the money value of the various items as they are awarded to one party or another. Get your pencil and paper on that, and we'll start on that in just a minute.

First of all, on the basic issues, the court finds that the parties were married at the time alleged, and did have the children they agreed they had. The court finds that there are irreconcilable differences between the two that makes it impossible for the marriage to continue in a happy state. Therefore, the court will dissolve the marriage on the basis of irreconcilable differences.

I do not, in making this judgment, blame one more than the other. I do not believe the evidence has faced that issue, and it has not been tried. The issue that's been tried is only the issue of whether or not the parties can restore the marriage. The court answers that question no.

As far as the child is concerned, court considers the evaluation that's in the file, and admissible before the court pursuant to stipulation, depicts a child that probably has considerable, serious problems. The recommendation made there is that the child's custody, physical custody be awarded to the father. The court accepts this, and that's the only reasonable alternative before the court at this time. The mother should have a right of reasonable visitation. If she desires to do, she may also send another person to visit for her, such as sending a son over to contact her, or something of this sort, or perhaps getting the son to go with her, or something of this nature so that perhaps there will be some contact. He must not interfere if she sends a third person in her stead to see the child. He must honor the substitute, and -- because of the hard feelings. I don't want to necessarily throw all this on the back of the other brothers and sisters, but I think they might be useful somewhat in the situation.

Court recognizes peculiarities that are here present such as the girl going to the -- fifteen year old daughter going to a father's bedroom, and this type of thing. As far as the investigator could find, there is no reason, or unusual concern, and the court has seen none in this courtroom. The court will assume that it is

not a problem of unusual concern.

As far as the property is concerned, the first item -- the first thing the court wants to say is this: As far as the earning power of the two parties is concerned, the court finds that the plaintiff is a very personal lady of about forty-seven. She would be readily employable as a clerk, or other person who has to meet the public. The court accepts that she does have a learning disability that she's here described. And that this would limit her employment some. Court does believe that she should be charged with an earning capacity at least the minimum wage.

The court's heard the testimony about his earning capacity and this type of thing. The court finds that if encouraged to not work, he will not work. If encouraged to work, he could work if he had to. The court finds that he is like a lot of men his age. When he gets older, he'll find more and more of his friends will have medical problems. To work will give him a great deal of pain and suffering, and but he's still capable of doing that. Now, he has great skills, and can do many things. However, the court believes he will have considerable absenteeism, and as a result of that will probably work close to the minimum wage level. The court will assess earning capacity against him at the minimum wage at this

time.

The child support can be calculated on the basis here stated. As far as the assets are concerned, court recognizes that where the two parties have as close to equal earning capacity as they have as they appear before me today, that there should probably be no alimony either way. Each party is required to face the world, and do the best they can. Court awards no alimony to either side. Court also in considering these matters concludes that basically the law of the State of Utah is that all properties that are accumulated of value after marriage, unless there's a reason to view them as otherwise, are community property. And in a situation, divorce of this nature, should be divided equally, or as near equally as practical. What the court is about to do is intended by the court to be an approximate equality. And the court recognizes that exact equality is almost impossible. An article that might be, for instance clothing. If I were to award her his clothing would be to throw them away, and vice versa. There are many things that are of value to one or not valuable to the other at all, are valuable in different states. That doesn't mean I don't have to give it to one side, and charge that side with the property, and I must do this. The equation on the bottom line is not going to be equal. Court recognizes that.

And all this is some type of an equitable effort to do that. Nothing more.

First of all, the store. He had the store before the marriage. The store had a debt on it before the marriage. Per se this is not community property. The store basically is his store. However, the store has changed its character grossly while the marriage has been in place, and has probably grown in value, perhaps ten times. Part of this is pure inflation, but part of it is just the fact that they must have done reasonably well at the store, or it would never have sold for what it sold for. Court believes it should be treated as community property except the debt against it must be recognized, and accepted. The court believes that the exhibit that's been presented is a valid one, and was written on approximately the date there indicated. Court notes that the interest -- the $14,008.84, court notes that it states six percent interest. It says nothing about compounding or interest on interest. Inasmuch as the court does not favor in family dealings, particularly implication that compound interest is intended, the court will accept this instrument as non-compounding. This means this debt in reality is the $14,800.54, and that the interest six percent on it is $840.51, and that would be assessible each year then on.

MR. RUSSELL: I didn't hear the last figure.

THE COURT: I'm using his calculations, and his calculation is that the first year's interst was $840.51. Using this theory, that -- the debt would grow that much each year. But there's no interest on interest per se. Do you both follow me on that?

MS. DONOVAN: Are you saying, Your Honor, that the interest each year is $841.51, so we multiply that times the number of years that are supposedly due and owing, and that's the amount you're claiming is due and owing to Mina Finlayson?

THE COURT: Yes. This is I believe interpreted in family dealings, where there's no discussion of compound interest in the debt. You can figure that out quickly if you'd like.

We go next to the issue of the lot next door. Court does not interpret this property to be marital property. The court does this for two reasons. The first of all, the court believes that the preponderance of the evidence is that he was given it as trustee to take care of it for his mother. However, if for any reason that failed, then the court could say that the next alternative that the court is faced with is he has been given the property as an advancement on his inheritance. Neither way does it become community property. The court deems it is not

community. Insofar as the house is concerned, court deems the house to have been purchased, so far as I can tell, while they were together. It's been paid for while they were together. It is full community property. The so-called debt for rent, $190.00 a month, the court believes that the statute of limitations has run during this period, and that in estoppels also, there's been a sleeping on rights which come into play. Court says in effect it's an affirmative defense, and he can waive it if he wants to, but he can waive it only for himself when he is no longer acting in concert with his wife. He cannot waive it for her. Any payment he makes on that debt is chargeable to his side, not her side. There a question about what I'm saying?

MS. DONOVAN: I don't understand what you're saying, Your Honor. On the rent, you're saying that the statute of limitations has run on the rent?

THE COURT: Yes. That's the $190.00 a month for the first five years the marriage, no enforcement has been seriously made since that time. The court believes that that is -- that there's been a sleeping on rights, so that it's not enforceable. And if it were, and if he has waived it, he can waive it for himself, but he is no longer by the time that occurs her agent. Clearly not so. He cannot in equity waive her rights. So I deem any

payment he makes on that debt comes out of his share. Do you both understand what I've said?

MS. DONOVAN: I'm not quite sure. Are you saying that there's no obligation to pay any rent, but if he does, that's his own?

THE COURT: I say there was an obligation to pay the rent years and years ago. Such a thing existed. But there was no effort to enforce it, and both through the statute of limitations, as well as estoppel, she could defend against her mother-in-law. If he chooses not to defend, by the time he made this choice, he was not her agent. He's waived it on his own. He still owes his mother the money, but he can't waive it and bind his wife.

MR. RUSSELL: Your Honor, just so I understand, what I perceive that the court is ruling is that Mr. Finlayson does not get any credits against use of marital property for the payment on that particular debt?

THE COURT: That's true.

MR. RUSSELL: Is that understood?

MS. DONOVAN: Yeah, I think I understand that.

MR. RUSSELL: Understand, Your Honor.

THE COURT: Now, we get -- that was the

larger items. Now we get down to the house sale. The house, it is true he's in the house, and he's in the house with the girl. The court has mixed emotions about how this must best be handled as far as empathy for the child, and the other circumstances that are present. The court believes that after the first of the year, for every month that the house is not sold, that he -- she gets the first $400.00 off the sale in rents. Both of you understand what I'm saying?

MS. DONOVAN: Yes, Your Honor.

MR. RUSSELL: Your Honor, she accrues $400.00 as a credit on the proceeds for every month after December of this year?

THE COURT: Yes. At the end of December -- start the first of January, if he still hasn't sold it, she starts getting $400.00 off the top. If it is not sold in six months from then, she has a right to petition the court to occupy the house, and proceed to sell it.

MR. RUSSELL: June 30th, Your Honor?

THE COURT: Right now. I don't know much about Salt Lake. If they were in the northern end of the State, they could not demand a sale in less than six months. Do you follow me what I'm saying?

MS. DONOVAN: Yes.

THE COURT: We have to understand the rules

on this.

MR. RUSSELL: Six months after the first of the year, she may petition the court to regain possession.

THE COURT: No. She might petition for the right to take the house, start getting this $400.00 a month.

MS. DONOVAN: Is that six months from now, or --

THE COURT: Six months from the first of the year. He really needs to do these repairs that he's been told. He's got the intelligence. He will not be able to hold that house against his wife's interests, absent some type of a rent, or agreement, such as the $400.00 figure.

Now, we've come do what appears to be an impossible number of private things. First of all, each party has their own clothing. He gets the male jewelry, and she gets the female jewelry. I understand they've got one loose diamond; is that right?

MR. RUSSELL: Yes.

THE COURT: What do you say that diamond is worth?

MR. RUSSELL: We haven't appraised it, Judge.

THE COURT: What do you say it's worth?

MS. FINLAYSON: I don't have -- I don't know.

THE COURT: How many karats is it? Or what part of a karat?

MS. FINLAYSON: I only know that was the first diamond, but it was a small one, but what size it was, I have no answer. I only know that the one that I do have now --

THE COURT: Otherwise they are going to divide the jewelry on a male female basis. Do I have trouble with anything but the one diamond?

MR. RUSSELL: With the exception of that one diamond, I believe it's been divided.

THE COURT: Court, just an arbitrary point per se, the diamond is worth $250.00, and she has to take it be unless he offers more within twenty-four hours. She has to take it at two fifty unless he bids more. Then it will go to the highest bidder.

Now, the dolls, the court believes that the dolls are something if I give him he'll merely sell them, and they will decrease in value where they might have more value to her. The court grants her the dolls, fixs their value in the neighborhood a thousand dollars. So far as the guns, the court award each side possession of the guns they have, and fix the guns in his favor at a thousand dollars.

Court comes to the tools. When I say tools, I mean

outdoor working for gardening and et cetera, or for automobiles, or for guns. These are the tools. He has to take them. He's got to make peace with his son. However the court is aware that we have some things such as the lathe to the effect that the lathe on a secondhand basis is worth in the vicinity of a thousand dollars, and he's got to make his own peace with the son.

MR. RUSSELL: Your Honor, is the one thousand dollars, is that an aggregate value?

THE COURT: That's what I'm counting on, but he's got to take it. If she takes it, she'll end up auctioning it. She'll be lucky if she gets $600.00 for it. At least I'm fearful that she will.

We come now to furniture. I looked at this list of furniture, and it is true in the eyes of the law, furniture per se that he had before he got married would be his. Except if they are kept and used can in connection with the total home atmosphere, they can loose character. What does each say about these furniture items which he had without question before he got married? What do you say? Do you say they are his? Or does -- if you live twenty-seven years in a house with a woman then they are partly hers?

MR. RUSSELL: Your Honor, I think that they don't loose their character, because there are several

rooms in the house with various degrees of usage, and some of those rooms have to be susceptible for storage of those items.

THE COURT: What could you say on this question, the items which he's listed as owning before the start?

MS. DONOVAN: Your Honor, there are certain items we don't care about, and we're not going to argue about. But from a legal theory, I think after twenty-seven years, things that are in dispute probably merge. And to try and figure out exactly what he owns, or she owned, or whatever, I think is a very difficult task.

MR. RUSSELL: I agree it would be extremely difficult, Your Honor.

THE COURT: How many chairs and things of this nature are there that he claims have been in the family for forty years?

MR. RUSSELL: All I can refer to is the handwritten list that he made out.

THE COURT: Suppose I do it this way: We'll have a throw of a coin. One of you choose one room, and another choose another room until I've run out of the rooms, and that's the way the division is. The furniture -- be ready to play that way.

MS. DONOVAN: Each party select a room, and takes all the furniture in that room?

THE COURT: I'm going to start this action in a minute. I'm going to throw up a coin, and have defense counsel throw the coin. Plaintiff's counsel call heads or tails. If she's correct in her call, then she makes a choice for her client --the first choice of room. Then it will be the defendant's choice, and the plaintiff's choice, and then the defendant's choice until I run out of rooms. And then I'll count the garage as one room. But the tools are already gone. You understand what we're going to do?

MS. DONOVAN: I think so, Your Honor.

THE COURT: You've got the rules?

MS. DONOVAN: I think I've got the rules.

MR. RUSSELL: I think I'm with her.

MS. DONOVAN: You're including the garage?

THE COURT: You're not excluding the garage. The garage counts on the end, but the tools are gone.

MS. DONOVAN: You're giving all the tools to Mr. Finlayson.

THE COURT: He gets all the tools, but he's got to make some kind of peace with Kurt. I think he's told Kurt he owns all the tools.

MS. DONOVAN: He's given everything to Kurt.

THE COURT: I think the tools are his. All right. I'll have the baliff throw the coin. Plaintiff's counsel call it, unless defense attorney wants to throw it.

MR. RUSSELL: No. No. Baliff is fine. Your Honor, if I might just see if we can resolve something in this area --

THE COURT: If you want to go out to the house, I don't know whether you need a baliff to referee or not, but otherwise I'm going to divide by lot from here on down. I'll divide cars in a minute.

MR. RUSSELL: Your Honor, can we have two minutes to talk about this, Judge?

THE COURT: Let me take cars, first, and then I'll go away.

MR. RUSSELL: Thank you, Your Honor.

THE COURT: Is it my understanding that she generally drives the Accord?

MS. FINLAYSON: Yes.

THE COURT: And is it my understanding that he generally drives the jeep? Okay. You've each got the car you generally drive. I believe that he will make better use, and get more money out of the Dodge van. I'll give it to him, assign it's value at $500.00. The dune buggy, court will assign it to him, an assess its

value at only $300.00. If she wants it, she must bid now more than four hundred today. Does she wasn't to let it go for that figure, or does she wasn't to take it?

MS. DONOVAN: We'll let it go, Your Honor.

THE COURT: Come to the mobile home. She's put a very high value on it; is that true? What is her value?

MS. DONOVAN: It was based upon an appraisal that she said.

THE COURT: What do you say it's worth? What are you bidding on it?

MS. DONOVAN: The appraisal was between ten and twelve. They've come up with a number of appraisals saying it's like three or four.

THE COURT: What do you say it's worth?

MR. RUSSELL: Between thirty-six and $3,900. We got four appraisals in that range.

THE COURT: She can have it at ten thousand. Put her down for ten thousand.

Court will be in recess for five minutes while you people talk about tomato catsup and the dishes. I would urge you make some kind of a division so that they both end up in the capacity to keep house.

MR. RUSSELL: Thank you, Your Honor.

THE COURT: Court is in recess until called.

(a recess was taken)

THE COURT: Have you made any progress?

MS. DONOVAN: We're getting closer, Your Honor.

THE COURT: Let's talk about how closer.

MR. RUSSELL: Judge, I think that Ms. Donovan and I, rather than flip a coin, and use the lists of personal property, Your Honor, would prefer to set some rules, and go out to the residence where we've got physical, tangible things to pick up and look at to do this, and we have a good enough professional relationship that I think we can maintain, and do it more officially than the court can by using these lists.

THE COURT: You need the baliff with you, or just the two of you?

MS. DONOVAN: I don't think so.

MR. RUSSELL: We did this before with the previous counsel, Your Honor, so the four of us -- the three of us, and previous counsel have done the inventory.

THE COURT: Have you got these figures that you got running?

MR. RUSSELL: We've got your figures, Judge, and what I think we need to do is to continue with that through the motorcycles, and the boat on what I call the

big ticket items, and then have the court give us its ruling as to the intangible personal properties, the life insurance, the Putnam Fund.

THE COURT: What I try and do is use this so that when I got to the bottom line I've got equality. Some of you will have some types of things you'd rather do with others. Here's your chance. Otherwise --

MR. RUSSELL: I'm sorry, I don't understand what the court has said.

THE COURT: I don't rule who owns those things. All I care about is how much they are worth.

MS. DONOVAN: There are some items that we're asking as to the court's value.

THE COURT: If you want me to set values on it, I can do it, but -- and then you can go out and count them for bid purposes.

MR. RUSSELL: I guess that's what we need is values on the motorcycles, and the boat, and a ruling on the --

THE COURT: The ruling usually used is this: That the party who listed is as the most valuable ends up having to take it at that value.

MR. RUSSELL: All right.

THE COURT: Do you understand what I'm saying?

MR. RUSSELL: Yes, Your Honor.

THE COURT: When they are not highly personalized things.

MR. RUSSELL: All right. Your Honor, we didn't ever get values on the Honda and the Jeep.

THE COURT: On the Jeep?

MR. RUSSELL: Yes.

THE COURT: On the car? The car I think is worth -- I think the car and the Jeep, I'm equating that, about seventy-four five.

MR. RUSSELL: The car and the jeep are seventy-four five?

MS. DONOVAN: You're saying they are of equal value?

THE COURT: Roughly.

MS. DONOVAN: I'm not clear. Are you saying the Honda Accord and the Jeep Wagoneer are worth how much?

THE COURT: $7,450.00 each. I understand that some of you value them higher than that, some of them lower.

MR. RUSSELL: All right. I understand. I missed that point.

MS. DONOVAN: What about the hondas, all those motorcycles, Your Honor?

THE COURT: You want me to fix the motorcycles for you? I take it '78 750 you both valued at three hundred; is that true?

MS. DONOVAN: Yes.

MR. RUSSELL: That's an agreed value, Your Honor.

THE COURT: The '85 Honda 700, court will set the value at eighteen hundred. The '84 Honda, that's the 250, I recognize I can miss somewhat here, only owned one motorcycle in my life, and it was smarter than me, and I went down. You see how much I know about motorcycles. But I'll set it at four fifty. Undoubtedly the 68 -- and I assume this is two of them?

MR. RUSSELL: Yes. We'd stipulate to one each on those.

MS. DONOVAN: That's correct.

THE COURT: It would be my guess to give each of you one, but if they are that old -- They are little trail bikes? I think $50.00 figure is pretty close.

MR. RUSSELL: Thank you, Your Honor.

THE COURT: Now, there's -- you've got a Honda 80, here again it's a small trail bike, $125.00. I've got another Honda 75, and I assume that's a little street bike.

MR. FINLAYSON: Same as the other one.

MS. DONOVAN: We both have that as $50.00.

THE COURT: Down to the '78 Honda 75 ccs.

MS. DONOVAN: We've both listed that at fifty.

THE COURT: Okay. Now, you're down to your boat.

MR. RUSSELL: Yes, Your Honor.

THE COURT: Two thousand five hundred. Have you got something else you want to value?

MS. DONOVAN: We have some other accounts, stock accounts, Equity Trust account.

THE COURT: If they are stock accounts, we'll just look at the last quote on it. If they are listed on any board -- are they?

MR. RUSSELL: Yes, they are listed, Your Honor. We might suggest a fifty fifty in kind distribution on it.

THE COURT: That would be the general goal, except you're going to have to be even on the big bottom pictures. All I'll do is go and look at the newspaper. So, whatever the newspaper says they are worth. What the Wall Street Journal says they are worth today is what they are worth. Is that clear? Do they all appear in the Wall Street Journal somewhere?

MS. DONOVAN: I'm sure they do, or they have

the most current statements. So you're saying that in theory those should be divided equally subject to the bottom line on the other assets?

THE COURT: Yes. You realize when I get close to the bottom line I have to start making people take things, maybe. But the real real bottom line is cash.

MS. DONOVAN: Right.

THE COURT: You understand that?

MR. RUSSELL: Yes, Your Honor.

THE COURT: Now these policies, what do you each say about those?

MS. DONOVAN: Which policies, Your Honor? The life, USA policy?

THE COURT: Yes.

MS. DONOVAN: We had proposed, I think that at least one, they be divided equally.

MR. RUSSELL: Yeah, ours.

MS. DONOVAN: Yeah.

THE COURT: Can you split ownership?

MR. RUSSELL: I don't even know, Judge.

MS. DONOVAN: Our understanding is you can, Your Honor.

MR. RUSSELL: We would suggest that both of them be split.

THE COURT: If you can't, you're going to end

up flipping coins. That's the bottom line. This coin collection, the only thing I can do is make you bring it into court, or some place, and start picking up coins.

MS. DONOVAN: Camper World membership, Your Honor?

THE COURT: I'm amazed at the high value placed on it.

MS. DONOVAN: She called and asked them what going memberships were, and that's what they told her.

THE COURT: They must have paid a whole lot less than that.

MR. RUSSELL: Several thousand dollars less.

MS. FINLAYSON: I think we paid $7,000 for it.

MR. RUSSELL: Less $4,000 would be our proffer.

MS. DONOVAN: Her proffer would be they paid around seven.

MS. FINLAYSON: I don't have the papers; Roger does.

THE COURT: Put it down on the choice on the person who gets it, gets it for four thousand five hundred. Divide the coins coin at a time, unless you agree on it. The gun collection we've talked about. The tools we've talked about. The dolls we talked about. I

take it the various accounts are worth what they say they are. What about the big vault?

MS. DONOVAN: We listed it at twelve hundred.

MR. RUSSELL: We proposed, Your Honor, that that be one of the items to be divided, along with the fireplace insert, utility trailer, cement mixer, riding lawnmower, mulcher, snowblower, canoe. We're into small personal property at this point.

THE COURT: You can work on that out on your picnic.

MR. RUSSELL: Yes, Your Honor.

THE COURT: Anything else?

MR. RUSSELL: Your Honor, I had a few matters of clarification. The first one is that the court is awarding monthly child support as per the stipulated guideline sheet, Your Honor?

THE COURT: That's true. Minimum wage for each. I think that's the figure you used; isn't it?

MS. DONOVAN: No. It was based upon actual earnings of about $300.00 a month each.

THE COURT: Let's see, minimum wage --

MS. DONOVAN: It's around seven hundred a month, Your Honor.

MR. RUSSELL: That's historical figures.

THE COURT: I think they should each be

charged with minimum wage.

MR. RUSSELL: For the purposes of alimony, or child support?

THE COURT: Both. I think they are equal as far as earning capacity. She's less schooled, but he's more schooled, but his health isn't as good and her. I think they are about -- between now and death, they should come close to the same.

MR. RUSSELL: I understand the court's ruling, Your Honor.

MS. DONOVAN: Bill, do you have some other questions?

MR. RUSSELL: No.

MS. DONOVAN: Your Honor, are you going to order any counseling for Trisha?

THE COURT: If you -- if one side or another will fine a counselor who's willing to work with her, the court will order counseling, and require each to pay half.

MS. DONOVAN: Just so I'm clear --

THE COURT: But it would have to be a counselor of some repute. I don't want to send her to just anybody. Get somebody that's worked with children, and this type of thing. There are people who do it. And they usually accomplish something.

MS. DONOVAN: Your Honor, if I understand your ruling, I believe you're saying that you are -- with regard to the Hallmark Card Shop, you're recognizing that original fourteen thousand dollar debt to Mrs. Finlayson with simple interest at the rate of $841.51 per --

THE COURT: I think that's six percent.

MS. DONOVAN: If those figures are accurate, I did some rough figures, over the last twenty-seven years the total of that would be close to thirty-six -- $37,000 total obligation. She's received $67,000.

THE COURT: I know this.

MS. DONOVAN: It appears there's an over-payment then to her. Are you saying, then, that -- I'm not quite sure how we're to deal with that. Is the rest of the other money considered marital money to be divided equally?

THE COURT: Yes. I don't think that debt is any greater than what I've said.

MS. DONOVAN: So it appears there's been an over-payment, and funds should be coming back.

THE COURT: Not necessarily, because I don't know whether he paid that money on that debt, or whether he paid it on the rent debt. I don't know whether he paid -- what he paid the money --

MR. RUSSELL: That also begs the inquiry that

we have to have a finding on an amount that she withdrew from the account, which is our last entry.

THE COURT: I believe there's no dispute on it; is there?

MS. DONOVAN: It was the $25,000 figure.

MR. RUSSELL: Thirty-five thousand.

MS. DONOVAN: It wasn't thirty-five. There was a withdrawal of twenty-five thousand on here. The only withdrawal he shows on his exhibit, 25,988.89.

MR. RUSSELL: It's not on -- that exhibit is not a model of clarity. I believe the bank record will show that she did an actual withdrawal of about $35,000, overdrafted the account by $9,500.

MS. DONOVAN: There's no evidence of that. Those statements that were submitted into evidence --

THE COURT: I can go through those, and go back through the evidence unless you just want to draw an inquiry. There's no sense in having a court hearing this with attorneys' fees over it. If you checked with the institution, they'll tell you what was withdrawn.

MS. DONOVAN: Just so I'm clear, then, Your Honor, my client --

THE COURT: It's my impression that she drew about thirty-five, but I might be wrong.

MS. DONOVAN: But there's no record, other

than what he says. There's no bank statement or anything else. I'm sure we can get the record on that. Are you saying, whatever was in that account should be divided equally less whatever she withdrew?

THE COURT: And he withdrew.

MS. DONOVAN: All of that is a fifty fifty division; correct?

THE COURT: That's true. Only subject to the bottom line.

MS. DONOVAN: If he's overpaid his mother, then my client gets a credit?

THE COURT: This is true. If he's used some of his share to pay his mother, that's his problem.

MS. DONOVAN: On the lot, I understand your ruling to say that that lot, even though it was in both of their names, is not marital property?

THE COURT: I think -- in the first place, I think it's a trustee. And the second place, I think that he is not a trustee. His only involvement would be that he's in there on an early inheritance.

MS. DONOVAN: There was testimony that they would be given any credit for taxes that they made over the years. Are you going to order that that happen?

THE COURT: That's the -- you realize that when you get involved in those taxes and that kind of

thing, you might have to face her. If defense counsel goes and files a lawsuit tomorrow, this might change this whole thing for her. The ninety-three year old mother, she's still here, and we're going to have to deal with her if she comes.

MS. DONOVAN: So what are you saying on the taxes? Her testimony was that they were going to arrange it, and be reimbursed.

THE COURT: I don't know why you're excited on this. How much are the taxes on a vacant lot?

MS. DONOVAN: They've been paying them for fifteen years or so. Five hundred a year.

MR. RUSSELL: I've got it right here.

MR. RUSSELL: 407, 414. Eight hundred for two years. No, that's not it.

MS. DONOVAN: It could be $6,000 for the last few years.

THE COURT: He's going to have to settle that with his mother. I think as far as his credit is concerned, no. Don't give credit for it now. It was some -- if that was given away, it was given away the year in which it was paid, and it's no longer -- How he makes out with his mother is another problem. I can't believe that the taxes are that high on a vacant lot.

MS. DONOVAN: We have the receipts for it.

So you're saying there would be no credit?

MS. DONOVAN: That's true.

THE COURT: That was given away years ago.

MS. DONOVAN: Are you making any order on attorney's fees, Your Honor?

THE COURT: Yes. But are you ready for that?

MS. DONOVAN: Yes.

THE COURT: Basically, I think the parties both have assets, and under the series of Utah cases have recourse to pay their own attorneys. Court believes that there has been unnecessary proceedings brought on by the failure to let her see the child, and this type of thing, so that he must make a contribution of $500.00 to her fees because of those items. But that is all. Other than that, they both have funds they can pay their own way.

MS. DONOVAN: Are you making any order on contempt, Your Honor?

THE COURT: I can not find any contempt on the evidence I've received here. I think he's shown lack of wisdom in some respects, but I cannot say contempt.

MS. DONOVAN: Are you making a specific visitation schedule, Your Honor?

THE COURT: No, because I'm not sure -- I'll do so if it's necessary to talk to the girl. I would

suggest that you stipulate that you have her appear before one of the commissioners, and let the Commissioner set it. Now, Judge Peuler, did he see her at all, or did he just talk with her?

MS. DONOVAN: Commissioner Peuler spoke with her and one of the other children, yes.

THE COURT: I would suggest that I transfer that back to see if you can settle it before a Commissioner. I think the more you involve that girl in coming into court, the bigger a mistake you'll make.

MS. DONOVAN: Your Honor, just so I'm clear on what we're doing, it appears that you've placed certain values on these items, and after we go out and have our picnic, as you call it, and figure out who gets what with these certain values, we'll come down to the the bottom line then, and determine if one or the other owes the other money?

THE COURT: That's true. Not owe money, they owe --

MS. DONOVAN: Credit?

THE COURT: There's going to be money coming out of the house. Plaintiff's attorney has one week to draft the papers, and get them over to defense attorney for approval as to form. If she doesn't do it, then he gets one week.

MS. DONOVAN: Maybe I should wait a week, then he'll have to do it.

MR. RUSSELL: I object to that, Your Honor. I don't object to that, Your Honor.

THE COURT: Sometimes you like to control things.

MR. RUSSELL: That's fine

THE COURT: Is there anything else?

MR. RUSSELL: Nothing at this time.

MS. DONOVAN: I don't think so, Your Honor.

THE COURT: Let me say this to the two parents. You're both decent people, and when you got married, I think you probably had high hopes for everything. I think this is true. I think today you're still decent people. I don't know what happened, why you waged war on one another now with the intensity with which you both wage it. The evidence doesn't disclose it to me. There may be good reasons for it. But I would try the best I could not to wage war through the child. My guess is she's terribly torn. I have only been a Judge thirty-five years, but I can tell you one thing for sure, that is it doesn't matter whether it's true or not true, if you tell a child that she was sired by some kind of a fiend, she won't love you for it. And if you try to tell a child that her mother was an animal, she won't

love you for it. If you ever pulled a few white lies in your life, I suggest you do now, because that's the only hope you've got. Otherwise, nobody likes to be told that their parent are merciless. You tell her that, they'll say why did you pick him to be my father, and vice versa. You almost have to say kind things, even if you have to leave something unsaid.

Is there any other questions?

MR. RUSSELL: Nothing further, Your Honor.

MS. DONOVAN: No, Your Honor.

THE COURT: Court is in recess.

* * *

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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

ARVILLA FINALYSON,	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Plaintiff,	:	(THIRD PROPOSED)
vs.	:	
ROGER FINLAYSON,	:	Case No. 904905062 Judge Timothy R. Hanson
Defendant.	:	(Tried by Judge Wahlquist)

This matter was tried to the Court on October 17 and 18, 1991, after the parties stipulated to certain matters on the record. Plaintiff and Defendant were both present and represented by counsel of record, Sharon A. Donovan for the Plaintiff and William R. Russell for the Defendant. Both parties presented evidence and argument, whereupon the Court entered its ruling upon the record in open Court, and after which the parties entered into stipulations as to the division of numerous items of minor personal property not specifically awarded by the Court. Defendant's counsel drafted proposed Findings, Conclusions, and a Decree of Divorce, which were served by personal delivery upon Plaintiff's counsel on December 10, 1991. Thereafter, Plaintiff's counsel timely filed an Objection to the form of the same. Defendant's counsel prepared Second Proposed Findings, Conclusions, and Decree, incorporating some of the changes

requested in said Objection, and a hearing was held on the remaining objections on February 21, 1992, after which the Court ordered changes and additional language.

Based upon these proceedings, and for good cause shown, the Court makes and enters the following

FINDINGS OF FACT

1. Plaintiff and Defendant are residents of Salt Lake County, Utah, and had been such for more than three months immediately prior to the filing of the Complaint herein.

2. Plaintiff and Defendant were married on September 4, 1964 and since that time lived in the marital home until their separation on about December 21, 1990. Prior to physical separation, the parties ceased to live as husband and wife but continued to occupy the same dwelling.

3. The parties are parents of several children, but only one has not yet attained the age of majority: Trisha Finlayson, age 15. No other children are expected.

4. Both parties are fit and proper persons to be awarded the legal custody of the minor child, Trisha Finlayson, and joint legal custody is appropriate. It is in the best interests of the child that Defendant be awarded her sole physical custody. Plaintiff should be allowed reasonable visitation, as set forth in and in accordance with the standard visitation schedule promulgated by the Third District Court, a copy of which is attached hereto. The primary reason for the Court's ruling is the obvious choice of the daughter. Her style of living clearly indicates that for many reasons she is more

closely bonded to the father as she prefers to eat meals with him, watch television with him, and spend hours visiting with him. An unusual characteristic of this fifteen year old girl, she is frightened in the night, she goes and sleeps on her father's bed. I find no evidence of incest, and believe this is the process of personal fear in the maturity of the child. Either party may select a qualified family counsellor, who regularly works with children, to engage the minor child in sessions relating to the separation and divorce, and continuing relationships and visitation with her parents. Each party shall cooperate to schedule sessions, and each shall pay one-half of reasonable counselling fees.

5. Plaintiff should be ordered to pay monthly monetary base child support to Defendant, in accordance with the Uniform Support Guidelines. In this regard, the Court finds that each party is relatively able-bodied, has employable skills, is capable of presently obtaining and maintaining full-time minimum wage employment, and each is voluntarily unemployed or underemployed. As such each is attributed with minimum-wage, full-time earnings in the amount of $731 gross per month, and the same amount is hereby imputed. In accordance with the previously filed Worksheet, a copy of which is attached hereto, Plaintiff should be ordered to pay to Defendant the sum of $102.50 as monthly base child support.

6. Both parties have engaged in employment since their separation, Plaintiff is presently employed part-time, and the Defendant is not presently employed. In light of the findings of

employability and the income imputed to each of them in paragraph 5 above, while both parties may be in need of some financial support, neither party has the ability to pay the same, and accordingly no alimony should be awarded at this time.

7. The parties have acquired an interest in real property during the marriage, located at 4950 Highland Circle, Salt Lake City, Utah, which is presently listed for sale with a realtor. It is reasonable that Defendant be awarded the exclusive use and occupancy of the home, to reside there with the minor child, until December 31, 1991. If the home has not been sold by that date, Defendant shall be charged with a reasonable rental amount, beginning for the month of January of 1992, which is found to be $400 per month, as a deduction from the proceeds of any eventual sale thereof, for each month he occupies the same prior to sale. Defendant shall make necessary repairs on the home, while he resides there, as his abilities and resources enable him to do so. If the home remains unsold on June 30, 1992, Plaintiff may petition the Court for an Order requiring the Defendant to vacate the home, upon a showing that the Defendant has failed to take reasonable steps to promptly sell the home. If the Court then grants said petition, Plaintiff may be allowed to move back into the home and Plaintiff shall be charged with a like $400 per month rental amount against her proceeds from the eventual sale thereof. The Court finds that the home was partially purchased with funds realized from the sale of the Hallmark store, which was opened and operated by Defendant prior to the marriage with funds borrowed from Defendant's parents.

The Court further finds that except as to debt to Defendant's mother set forth herein, the home and property are within the marital estate, and the proceeds thereof shall be divided equally, but subject to adjustment to repayment of that loan and to awards therefrom to equalize the distribution of the entire marital estate.

8. The parties maintained a joint savings account at Zions Bank in 1990. Prior to the date this action was commenced, Defendant withdrew therefrom and paid to his mother, Mina Finlayson, the total sum of $57,285.03. These payments were made to repay the note due to Defendant's parents to open the Hallmark store, as more fully described in Finding paragraph 13, below. From the testimony at trial, the Court finds that Plaintiff knew of the nature and basis of this obligation, and urged the Defendant repeatedly throughout the marriage to repay the same. The Defendant's father obviously wished to hold control of the store and therefore required the signing of the note. This may have been partly to protect against creditors, or the weakness of the son. This was frequently discussed over the last few years. The Court cannot force the son to plead the affirmative defense of statute of limitations against his mother. Therefore, in justice and equity, the Defendant's mother holds a lien against the property, and should receive payment of that note. Up to date, monies paid to Mina Finlayson came from the sale of the store. Monies owed on the other note are a marital debt controlled by these findings.

9. In late 1990, Plaintiff withdrew the total sum of $35,488.89 from the joint savings account, which she used for her separate purposes. Plaintiff is awarded said sum as a separate award of marital property. Defendant is awarded his withdrawals partially as a separate award of marital property and partially as joint marital funds to pay joint marital obligations, to the extent set forth in Finding paragraph 13 below. Defendant should therefore receive as a separate award the remainder of withdrawals, less payment of marital obligations, resulting in net separate awards to Defendant of $16,731.29, and to Plaintiff in the amount of $35,488.89.

10. Each party should be ordered to pay any separate debts incurred in their own name, or as assigned herein, holding the other party harmless therefrom.

11. The parties have acquired interests in thousands of items of personal property during the marriage. The Court attempts to assign values and award distributions on only the larger items, and subject to a reconciliation of the entire marital estate to achieve equal distribution. Plaintiff is awarded all of the "Precious Moments" dolls, at a value of $1,000, and the Defendant is awarded all of the tools in the garage, at a value of $1,000. The parties' child(ren) may have some asserted interest in the tools but the Court awards them to Defendant subject to any interest the child(ren) may have, and Defendant alone shall account to said child(ren) for the delivery of said promised or gifted tools. Plaintiff is awarded the Honda Accord automobile and the Defendant is awarded the Jeep Wagoneer,

each at a value of $7,450. Each party is awarded one of the two Honda 75cc motorcycles. Each party shall receive one-half of the present interest in the Commonwealth Equity Trust fund, the Putnam Fund, the proceeds from the failed Thrift liquidators, the USA Life Insurance policy, and the Utah Power stock, which now is owned by PacifiCorp. The Court finds that all of the above items of personal property, as awarded are approximately equal and an equitable division thereof. It would be ridiculous for the Court to litigate the division of each one of their assets, and would consume hundreds of hours. The attorney's fees would exceed their value. At the time of the last conference on Findings of Fact, some division had occurred. The Court approves the division made by agreement. The basic order was that the bailiff would throw a coin to determine which person had first choice of the first item, and they would alternate those materials. The Court will apply this division method to the remaining assets as the only economic way to divide what may be hundreds more items.

12. The Court finds that during the marriage (in 1978) Mina Finlayson, the Defendant's mother, and/or a trust related to her, deeded real property located at 4946 Highland Circle, Salt Lake City, Utah, jointly to the parties, which deed was duly delivered and recorded. Said property is a vacant lot located adjacent to the marital home, and was owned by Mina Finlayson with her husband, who had died prior to the transfer of record title. From the testimony of Mina Finlayson and other witnesses at trial, the Court finds that Mina had, at the time of the transfer to the parties, decided to sell the property and as a

result, deeded the property to the parties as trustees, to maintain and attempt to sell the property for her. The Court further finds that said transfer was without donative intent, that no equitable interest passed to the parties, and that Mina's intent was solely to allow the parties to act as her agents in maintaining and selling the lot. Marital funds were used to pay the property taxes for such parcel as they came due. The Defendant did not request reimbursement for the taxes from his mother because of the two note obligations owed to her (more fully described in Finding paragraph 13, below) were of a substantial nature and had not yet been repaid. All dealings with the property have occurred since the marriage. There has been perhaps six thousand dollars paid in taxes, but there has no interest paid on any other debt. The Court regards this as a wash. As such, the Court finds that said real property is not within the marital estate. Each of the parties should be ordered to execute a Quit-Claim deed in favor of Mina Finlayson, her successor, or her designated agent.

13. Prior to the marriage, Defendant borrowed funds, in the amount of $14,800.84, from his parents to open a Hallmark store in the Cottonwood Mall, which was operated by Defendant prior to the marriage and by both parties during the marriage, and was later sold during the marriage. Said obligation was evidenced by a written promissory note, dated September 4, 1962 with stated interest of 6% per cent per annum, but without reference to simple or compound interest. While the Court finds both parties substantially contributed to the operation and

success of the business, the Court finds that although the business and its proceeds were in large part marital property, equity requires that the originally borrowed set-up funds be repaid by the parties from marital assets. The Court also finds that without this loan from Defendant's parents, the parties would not have had the opportunity to engage in and build the business, and reap its benefits. Thus, Defendant's repayment of funds to his mother in late 1990 were properly paid by marital funds held in a joint savings account. The Court finds simple interest to be applicable, and that interest accrued in the amount of $888.03 per year for 29 years ($25,752.87 total interest through trial), which, added to the principal amount, equals a total obligation of $40,553.74. Defendant made several repayments on said note in 1990. Insofar as repayments made to Mina Finlayson were made up to that amount, they are properly paid with joint funds. The separate note from Defendant to his parents for rental amounts owed to them for marital housing expenses is held unenforceable, and additional amounts paid to Mina from joint marital funds shall be charged to Defendant as a receipt of marital funds, which calculations are set forth in Finding paragraph 8, above. The Defendant's father, for reasons not fully disclosed in the evidence except by circumstantial inference, wished to maintain control of the store and may or may not have regarded it as a potential asset owned by himself. There is no fixed amount, but at the time the note was made, it was intended to cover inventory, and readily determinable by the parties, but held some possible dispute with creditors. There

has been no payment on this amount, but it has been discussed throughout the marriage by the parties. The son should not be forced to plead to the statute of limitations against his mother. The mother holds a lien for that inventory as against these litigants. The Court treats these two obligations differently because the store loan is attributable to the creation of marital property which the parties have enjoyed, but the rental loan yielded no asset subject to division. With reference to the "monies for rent" note, this loan was made during the marriage, with fixed interest at six percent. It was intended eventually that it would be paid. There was no payment on it. The statute of limitations has run. The wife has the right to plead the statute of limitations. In justice and equity, she should be regarded as free of the debt. Payments on that debt are considered voluntary by Defendant, and come from his share. Accordingly, Defendant alone shall be responsible to discharge the note relating to housing expenses, holding the Plaintiff harmless therefrom.

14. In addition to the above distribution, the Court finds the following values, and finds as equitable the following additional awards of property to the party so designated:

	TO PLAINTIFF	TO DEFENDANT
Savings Withdrawals	$35,488.89	$16,731.29
1978 Pace Arrow Motor Home	$10,000.00	
Camperworld Membership	$4,500.00	
Canoe	$300.00	

		Guns	$1,000.00
		1974 Dodge Van	$500.00
		Gulfstream Boat	$2,500.00
		Dune Buggy	$300.00
TOTALS	$50,288.89		$21,031.29

From the above awards, the Court finds that the Plaintiff has received $29,257.60 more than Defendant from the marital estate distribution. The Court therefore finds that in order to equalize the distribution of property, Defendant shall first receive said deficiency amount, as his sole and separate property and free from any claim of Plaintiff, less the $500 awarded to Plaintiff as attorney's fees in Finding paragraph 17 below, for a net amount of $28,757.60, from the net proceeds of the eventual sale of the marital home. The remaining net proceeds shall be divided equally between Plaintiff and Defendant. Plaintiff's counsel has recorded an attorney's lien against the property to secure payment of their fees, which shall be satisfied from the remaining sale proceeds awarded to Plaintiff, if the same has not then been paid, in the manner and priority provided by law.

15. It is reasonable that each party be granted as their sole and separate property their personal effects and belongings and any items they possessed before the marriage which have not lost their individual character by comingling. The parties shall go to the home, where many items of personal property are stored, and each shall remove any items that were acquired before the marriage as their separate property. The remaining marital items shall be divided item by item, by lot or

chance as to the first selection and alternating thereafter, and Plaintiff shall remove items so distributed from the house. Family photographs shall also be divided, but each party shall have the right to make reproductions thereof at that party's sole expense.

16. No contempt of the Court's previous orders as to either party has been shown, nor is the same found.

17. Defendant should be ordered to pay Plaintiff's attorney's fees in the sum of $500, and the same should be awarded, due to legal expenses incurred in pursuing sale of the home and other issues, as set forth in paragraph 14 above.

18. During the course of the marriage, irreconcilable differences arose between the parties, which led to their separation and have made continuation of the marital relationship impossible.

19. The parties should be ordered to execute any documents or perform any acts necessary and reasonable to effectuate the provisions of the Decree of Divorce.

20. Each party should be ordered to pay one-half of any uninsured medical expenses of the minor child. Neither party has health or medical insurance available at low or no cost at this time, but if either becomes eligible to obtain the same, each should be ordered to obtain the such insurance for the minor child.

Based upon the foregoing Findings of Fact, the Court hereby enters the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this action for Divorce.

2. Grounds for Divorce exist under Utah law.

3. Plaintiff is entitled to the entry of a Decree of Divorce, dissolving the state of matrimony existing between Plaintiff and Defendant, said Decree to contain all relevant provisions of the Findings and Conclusions set forth herein.

DATED this 17 day of March, 1992.

BY THE COURT:

JOHN F. WAHLQUIST
Senior District Judge

APPROVED AS TO FORM:

SHARON A. DONOVAN

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 1992, the original and a copy of the foregoing Findings of Fact and Conclusions of Law (Third Proposed) was hand-delivered to:

Sharon A. Donovan
DART, ADAMSON & KASTING
310 South Main, #1300
Salt Lake City, UT 84101

WILLIAM R. RUSSELL (2833)
Attorney for Defendant
8 East Broadway, Suite 213
Salt Lake City, Utah 84111
Telephone: (801) 355-4600

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

ARVILLA FINALYSON,	:	
Plaintiff,	:	DECREE OF DIVORCE (THIRD PROPOSED) 21736011 33192-812 cmm.
vs.	:	
ROGER FINLAYSON,	:	Case No. 904905062
Defendant.	:	Judge Timothy R. Hanson (Tried by Judge Wahlquist)

Based upon the stipulations of the parties, the evidence at trial, and the Findings of Fact and Conclusions of Law (Third Proposed) entered herein, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiff is hereby awarded this Decree of Divorce, dissolving the bonds of matrimony heretofore existing between the Plaintiff and Defendant, upon the grounds of irreconcilable differences, to become final upon entry hereof.

2. Both parties are hereby awarded the joint legal custody of the minor child, Trisha Finlayson. Defendant is hereby awarded her sole and exclusive physical custody. Plaintiff is granted reasonable visitation, as set forth in and in accordance with the standard visitation schedule promulgated by the Third District Court. Either party may select a qualified

family counsellor, who regularly works with children, to engage the minor child in sessions relating to the separation and divorce, and continuing relationships and visitation with her parents. Each party shall cooperate to schedule sessions, and each shall pay one-half of reasonable counselling fees.

3. Plaintiff is ordered to pay monthly monetary base child support to Defendant, in the amount of $102.50, which amount is in accordance with the Uniform Support Guidelines.

4. No alimony is awarded.

5. Defendant is hereby awarded the exclusive use and occupancy of the former marital home, located at 4950 Highland Circle, Salt Lake City, Utah, to reside there with the minor child, until December 31, 1991. If the home has not been sold by that date, Defendant shall be charged with a reasonable rental amount, which is found to be $400 per month, as a deduction from the proceeds of any eventual sale thereof, for each month he occupies the same prior to sale. Defendant shall make necessary repairs on the home, while he resides there, as his abilities and resources enable him to do so. If the home remains unsold on June 30, 1992, Plaintiff may petition the Court for an Order requiring the Defendant to vacate the home, upon a showing that the Defendant has failed to take reasonable steps to promptly sell the home. If the Court then grants said petition, Plaintiff may be allowed to move back into the home and Plaintiff shall be charged with a like $400 per month rental amount against her proceeds from the eventual sale thereof.

6. The parties maintained a joint savings account at Zions Bank in 1990. Prior to the date this action was commenced, Defendant withdrew therefrom and paid to his mother, Mina Finlayson, the total sum of $57,285.03. These payments were made to repay the note due to Defendant's parents to open the Hallmark store, as more fully described below. In late 1990, Plaintiff withdrew the total sum of $35,488.89 from the joint savings account, which she used for her separate purposes. Plaintiff is awarded said sum as a separate award of marital property. Defendant is awarded his withdrawals partially as a separate award of marital property and partially as joint marital funds to pay joint marital obligations. Defendant is therefore credited as a separate award the remainder of withdrawals, less payment of marital obligations, resulting in net separate awards to Defendant of $16,731.29, and to Plaintiff in the amount of $35,488.89 from this account.

7. Each party is ordered to pay any separate debts incurred in their own name, or as assigned herein, holding the other party harmless therefrom.

8. The parties have acquired interests in thousands of items of personal property during the marriage. The Court attempts to assign values and award distributions on only the larger items, and subject to a reconciliation of the entire marital estate to achieve equal distribution. Plaintiff is awarded all of the "Precious Moments" dolls, at a value of $1,000, and the Defendant is awarded all of the tools in the garage, at a value of $1,000.

The parties' child(ren) may have some asserted interest in the tools but the Court awards them to Defendant subject to any interest the child(ren) may have, and Defendant alone shall account to said child(ren) for the delivery of said promised or gifted tools. Plaintiff is awarded the Honda Accord automobile and the Defendant is awarded the Jeep Wagoneer, each at a value of $7,450. Each party is awarded one of the two Honda 75cc motorcycles. Each party shall receive one-half of the present interest in the Commonwealth Equity Trust fund, the Putnam Fund, the proceeds from the failed Thrift liquidators, the USA Life Insurance policy, and the Utah Power stock, which now is owned by PacifiCorp. The Court finds that all of the above items of personal property, as awarded are approximately equal and an equitable division thereof. The Court approves the parties division of household items as previously stuipulated, ordered and effectuated.

9. Both parties are ordered to forthwith execute a quit-claim deed for the real property located at 4946 Highland Circle, Salt Lake City, Utah to Mina Finlayson, her successor, or her designated agent.

10. Prior to the marriage, Defendant borrowed funds, in the amount of $14,800.84, from his parents to open a Hallmark store in the Cottonwood Mall, which was operated by Defendant prior to the marriage and by both parties during the marriage, and was later sold during the marriage. Said obligation was evidenced by a written promissory note, dated September 4, 1962 with stated interest of 6% per cent per annum, but without

reference to simple or compound interest. While the Court finds both parties substantially contributed to the operation and success of the business, the Court finds that although the business and its proceeds were in large part marital property, equity requires that the originally borrowed set-up funds be repaid by the parties from marital assets. The Court also finds that without this loan from Defendant's parents, the parties would not have had the opportunity to engage in and build the business, and reap its benefits. Thus, Defendant's repayment of funds to his mother in late 1990 were properly paid by marital funds held in a joint savings account. The Court rules simple interest to be applicable, and that interest accrued in the amount of $888.03 per year for 29 years ($25,752.87 total interest through trial), which, added to the principal amount, equals a total obligation of $40,553.74. Defendant made several repayments on said note in 1990. Insofar as repayments made to Mina Finlayson were made up to that amount, they are held to be marital debts properly paid with joint funds. The separate note from Defendant to his parents for rental amounts owed to them for marital housing expenses is held unenforceable, and additional amounts paid to Mina from joint marital funds shall be charged to Defendant as a receipt of marital funds, which calculations are set forth in paragraph 6, above. The Court treats these two obligations differently because the store loan is attributable to the creation of marital property which the parties have enjoyed, but the rental loan yielded no asset subject to division. The Court further treats the "monies for rent note differently for

the additional reasons set forth in the Findings of Fact (Third Proposed), heretofore entered, and upon which this decree is based. Accordingly, Defendant alone shall be responsible to discharge the note relating to housing expenses, holding the Plaintiff harmless therefrom.

11. In addition to the above distribution, the Court finds the following values, and equitably awards the following property to the party so designated:

	PLAINTIFF		DEFENDANT
Savings Withdrawals	$35,488.89		$16,731.29
1978 Pace Arrow Motor Home	$10,000.00		
Camperworld Membership	$4,500.00		
Canoe	$300.00		
		Guns	$1,000.00
		1974 Dodge Van	$500.00
		Gulfstream Boat	$2,500.00
		Dune Buggy	$300.00
TOTALS	$50,288.89		$21,031.29

From the above awards, the Court finds that the Plaintiff has received $29,257.60 more than Defendant from the marital estate distribution. The Court therefore orders, in order to equalize the distribution of property, that Defendant shall first receive said amount, as his sole and separate property and free from any claim of Plaintiff, less the $500 awarded to Plaintiff as attorney's fees in paragraph 14 below, for a net amount of $28,757.60, from the net proceeds of the

eventual sale of the marital home, after which the remaining net proceeds shall be divided equally between Plaintiff and Defendant. Plaintiff's counsel has recorded an attorney's lien against the property to secure payment of their fees, which shall be satisfied from the remaining sale proceeds awarded to Plaintiff, if the same has not then been paid, in the manner and priority provided by law.

12. Each party is awarded as their sole and separate property their personal effects and belongings and any items they possessed before the marriage which have not lost their individual character by comingling. The parties shall go to the home, where many items of personal property are stored, and each shall remove any items that were acquired before the marriage as their separate property. The remaining marital items shall be divided item by item, by lot or chance as to the first selection and alternating thereafter, and Plaintiff shall remove items so distributed from the house. Family photographs shall also be divided, but each party shall have the right to make reproductions thereof at that party's sole expense.

13. No contempt of the Court's previous orders as to either party has been shown, and no citation thereof is entered.

14. Defendant is ordered to pay Plaintiff's attorney's fees in the sum of $500, and the same should be awarded, due to legal expenses incurred in pursuing sale of the home and other issues, to be paid as set forth in paragraph 11 above.

15. The parties are ordered to execute any documents or perform any acts necessary and reasonable to effectuate the provisions of this Decree of Divorce.

16. Each party is ordered to pay one-half of any uninsured medical expenses of the minor child. Neither party has health or medical insurance available at low or no cost at this time, but if either becomes eligible to obtain the same, each is ordered to obtain such insurance for the minor child.

DATED this 17 day of March, 1992.

BY THE COURT:

JOHN F. WAHLQUIST
Senior District Judge

APPROVED AS TO FORM:

SHARON A. DONOVAN

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 1992, a copy of the foregoing Decree of Divorce (Third Proposed) was hand-delivered to:

Sharon A. Donovan
DART, ADAMSON & KASTING
310 South Main, #1300
Salt Lake City, UT 84101

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

ARVILLA FINLAYSON,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. 904905062 DA
vs.	:	JUDGE JOHN F. WAHLQUIST
ROGER FINLAYSON,	:	
Defendant.	:	

I will comment on the major points referred to in the briefs concerning the motions for a new trial.

SLEEPING JUDGE ISSUE

I was a judge in my youth. For fifteen years I was Utah's youngest. An older judge (Judge Ellett), told me that if I lived long enough I, too, would be stereotyped as a sleeping judge. He predicted it would first occur in an ugly divorce contest where no one could possibly enjoy "20 winks". He predicted that endless insults would be hurled back and forth. (See plaintiff's and defendant's recent affidavits alleging misconduct of each other.) I have lived long enough to enjoy this stereotyping as an old judge.

It is not only old judges who pick up this stereotyping. A Washington columnist pointed out that during presentations President Reagan would look down and listen without interrupting. One or more disappointed people in the back of the room always accused him of sleeping.

I do not recall sleeping on this case. In fact, I was never bored. I was constantly perplexed and asking myself why the attorneys and witnesses were saying what was being said. I have now asked myself how would a judge know if he had dozed. He might later discover that he missed something or not be prepared to rule immediately. I experienced none of these things. I believed that I suffered the entire ordeal. The courtroom was vented. The contest was joined, but there was very little conflict in the testimony on the major issues.

GROUNDS FOR DIVORCE

Irreconcilable differences were clearly evident. In fact, for a long time the husband lived in his bedroom, complete with refrigerator, television sets, etc.

CUSTODY OF CHILD

The only minor child is a 15 year old girl. She was never a witness, but the parties agreed that if she were forced to be a witness, she would choose to live with her father. Her older brother did testify and implied that his sister would run away if custody were awarded to the mother. This 15 year old girl was described in the testimony as a frightened, immature, and insecure girl. She was plagued by sleep disturbances and would arise in the night to climb in bed with the father and mother. In later years this habit continued, and eventually her parents slept in different beds in different rooms. She then went to her father's room and slept on his bed. The mother's attorney argues the father must be driven from the home to put an end to this strange behavior. There was no evidence presented to the Court of incest. The mother knew that this behavior continued while she was in the home.

The Court has certainly meditated on this matter and finds it is innocent. This testimony has played a part in leaving the father and the daughter in the home during the sale period, which the Court had hoped would be brief. Another phase of the problem is, "Why is the daughter completely alienated from the mother?"

WORK HISTORY AND THE STORE

The basic facts are not an issue. The husband had been married previously and between the prior marriage and the one in court had worked as a carpenter. He was employed on the construction of a large Salt Lake mall. His health was not very good. His father wanted to help him so he advanced approximately $14,000.00 to purchase the inventory for a gift store, and the son secured a lease for space in the mall. The father was obviously worried about losing the money if the new venture failed so he wrote out a note, which was signed by the son, wherein the son promised to repay the money to the father for all inventory bought with the $14,000.00 at 6% interest; and also purports to grant the father a first lien to be ahead of all other creditors. The defendant, who was the son, was operating the gift store business when he courted the plaintiff. This signed note was the property of the defendant's mother when the store was sold. The defendant, who was the son, paid off the note to his mother, as the father was dead at the time the store was sold. The couple kept the large profit and the Court has considered the profit to be marital property.

This note is written in the handwriting of the father, who has been dead for many years. the son testified that he and his

wife discussed the origin of the store many times, and she had urged him to repay the debt over the years. The defendant's parents also helped the couple financially in other ways.

This store was the only substantial source of income during the marriage and both spent their working days there throughout the marriage. The Court certainly finds that the origin of the store had been freely discussed. It is in a legal sense a callable note because the $14,000.00 figure was determinable by purchase receipts, etc. The lien that it reserved would certainly be ahead of the store owner's share. This payment, both morally and legally was proper.

NOTE FOR THE RENT OF THE APARTMENT

Early in the parties' marriage the defendant's parents provided them with an apartment for a lengthy period of time. A note was signed, but no payment was ever made on it. The defendant wants to pay the debt to his elderly mother. The plaintiff points out that the note is unenforceable because the statute of limitation has run. The Court has ruled that the plaintiff may assert this defense against her ex-mother-in-law. Of course, the son may repay this note from his personal share if he wishes to ease his conscience. The mother of the

defendant was a witness. She appears as a refined woman and was stylishly dressed etc., but appeared older than her chronological age, which is considerable.

LOT NEXT DOOR

The plaintiff and the defendant purchased a home early in their marriage. The defendant's parents bought a lot next to this home, on which they planned to build a home in order to be close to the son. The defendant's father died and the mother eventually decided not to build on this lot. Both the defendant and his mother have testified that they discussed the sale of the lot. The defendant's mother decided she would deed the lot to the son so he could look after it and put it up for sale. Both testified that the deed was made out to him and his wife as was the custom in those days, delivered and recorded. The defendant testifies that he never got around to carrying out the intent. In fact the evidence was strong that he frequently did not carry out intentions...his or other people's, as for example, the sale of the house as ordered by the Court. It must be remembered that the only work history of this couple is the tending of the gift card store.

The plaintiff testified that the transaction involving the lot occurred between the mother and the son. She maintains her ownership rights on two bases. First, the deed was delivered and recorded. Second, that each year when the taxes came due, the defendant paid the tax from the couple's joint property. The Court has considered the fact that the defendant has siblings and may have intended to hold the property until his mother died; but the defendant's mother appeared to the Court to be an extremely credible witness, and her testimony that is rebutted at most by the delivery of the deed, is believed.

ALIMONY

The defendant's appearance in Court and the manner in which he moves would lead to a gross over-estimation of his age. The Court can see no chance of high earnings, but he might be employable as a bookkeeper or store clerk at a low wage level.

The plaintiff's appearance is consistent with her age. Her only employment, in addition to clerking at the gift store, is with the Deseret Industry. These facts coupled with her appearance as a witness convinced the Court that her employment possibility is in the low wage range. She has been ordered to pay child support in accordance with the tables.

It is obvious that neither party is in a position to pay alimony from present earnings, while both could probably establish a need.

PERSONAL PROPERTY AND HOME

The parties prospered while running the gift store. They have accumulated more than the average couple. While they received some financial support from the defendant's parents, their income in the past has exceeded their expenditures. However, if their litigation continues their assets will be used up in attorneys fees. The Court has attempted to divide their personal property equally. This includes insurance accounts, stocks, etc.

There is a small sum awarded as attorney's fees for an isolated matter. Both parties could pay a normal fee for attorneys, but neither can afford what is occurring.

The biggest remaining asset is their home. The Court has considered it marital property and attempted to force a sale. The only reason defendant was given the first opportunity to sell was to provide the insecure 15 year old girl with familiar surroundings for a short adjustment period. If the sale process has broken down as indicated by some of the newer conflicting

affidavits, it is possible that there will have to be a new adjustment in that the sale may not be occurring as planned. This involves events since the trial, but does not change the ruling of the 50/50 split. It may be necessary to appoint a master to force sale of the home.

The Court endeavored to divide the major personal items. Each party was awarded a car, approximately equal in value. The wife got the mobile home. The wife received the doll collection valued by the parties at $1,000.00. The husband received the tools, but he will have to make his peace with his son, who claims ownership of some of these tools.

To continue that trial to divide thousands of personal items would run the attorneys' fees, when combined, to over $200.00 per hour, and cost to the State of Utah even more. The Court was impressed that Mr. Russell, the defense attorney, was able to maintain his sense of humor and persuade the defendant to try to reach an equal division by alternate choosing was the best possible plan.

The plaintiff's attorney, Sharon A. Donovan, appeared initially to accept the inevitability of an alternate choice system, but seemed to be having trouble with her secretary and her client. An example would be the immediate dispute over how the cans of spaghetti and other groceries would be divided.

It may become necessary to appoint a master to divide the personal items, but this does not justify the granting of a complete new trial and going back to square one. This trial has been a terrible ordeal for the parties. To continue it would only serve the purpose of delaying the acceptance of some decisions unpopular with either or both parties. There is no real contest on the divorce, child custody, and some type of equal division. In event of a re-trial the Court can see no way that either party would gain enough to offset the additional attorneys fees.

The Motion for a New Trial is denied.

DATED this 19 day of May, 1992.

JOHN F. WAHLQUIST
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 19 day of May, 1992:

Sharon A. Donovan
Shannon W. Clark
Attorneys for Plaintiff
310 South Main Street, Suite 1330
Salt Lake City, Utah 84101

William R. Russell
Attorney for Defendant
8 East Broadway, Suite 213
Salt Lake City, Utah 84111

Dec 11 1990

Received from Roger W Finlayson

Nine Thousand Three hundred Dollars

$ 9,300.00 Mina H. Finlayson

Dec 13 1990

Received from Roger W Finlayson

Nine Thousand Five Hundred — Dollars

$ 9,500.00 Mina H. Finlayson

Dec 12 1990

Received from Roger W Finlayson

Nine Thousand — Dollars

$ 9,000.00 Mina H. Finlayson

Dec 14 1990

Received from Roger W Finlayson

Nine Thousand Three hundred — Dollars

Plus Twenty Nine Thousand Six hundred

Eighty Five dollars and 03 cents

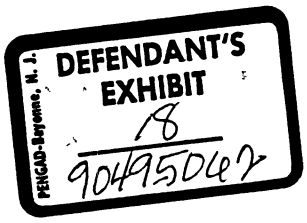
$ 38,985.03 Mina H. Finlayson

Utah Oil Refining Company

UTAH OIL BUILDING

Salt Lake City 10, Utah

GLEN A. FINLAYSON
Architectural Engineer



Roger w Finlayson
975 Diestel Road
Salt Lake City, Utah 84105

Sept. 4, 1962

To

Glen A. Finlayson and or Mina W Finlayson
973 Diestel Road
Salt Lake City, Utah 84105

I Roger w Finlayson promise to pay upon demand all monies borrowed, plus 6% interest per year, on each year on the monies borrowed until all monies borrowed and interest are repaid.

If in the event the store is not a success the first monies received from the sale of the store and contents will be reserved for the payment of indebtedness to Glen A. Finlayson and or Mina W Finlayson.

Dep 3

Roger W Finlayson

Bills paid by Mr. and Mrs. Glen A. Finlayson prior to opening the store - oct. 1962

8,021.75
250.00
92.03
250.00
800.00
51.50
1,200.00
1,000.00
5.15
3.09
23.69
1.84
1.55
22.90
22.10
2,262.94

14,008.54

Money borrowed to set up Finlayson Hallmark House from Mr. & Mrs. Glen A. Finlayson plus Interest

14,008.54

840.51 Interest 1963

1963 14,849.05 Total money borrowed plus Interest

890.94 Interest 1964

1964 15,739.99 Total money borrowed plus Interest

944.40 Interest 1965

1965 16,684.39 Total money Borrowed plus Interest

1,001.06 Interest 1966

1966 17,685.45 Total money borrowed plus Interest

1,061.13 Interest 1967

1967 18,764.58 Total money borrowed plus Interest

1,124.80 Interest 1968

1968 19,889.38 Total money borrowed plus Interest

1,193.36 Interest 1969

1969 21,082.74 Total money borrowed plus Interest

1,264.97 Interest 1970

1970 22,347.71 Total money borrowed plus Interest

1,340.86 Interest 1971

1971 23,688.57 Total money borrowed plus Interest

1,421.31 Interest 1972

1972 25,109.88 Total money borrowed plus Interest

1,506.59 Interest 1973

1973 26,616.47 Total money borrowed plus Interest

1,596.99 Interest 1974

1974 28,213.46 Total money borrowed plus Interest

Money borrowed plus Interest.

1974	28,213.46	Total money borrowed plus Interest
	1,692.81	Interest 1975
1975	29,906.27	Total money borrowed plus Interest
	1,794.38	Interest 1976
1976	31,700.65	Total money borrowed plus Interest
	1,902.04	Interest 1977
1977	33,602.69	Total money borrowed plus Interest
	2,016.16	Interest 1978
1978	35,618.85	Total money borrowed plus Interest
	2,137.13	Interest 1979
1979	37,755.98	Total money borrowed plus Interest
	2,265.36	Interest 1980
980	40,021.34	Total money borrowed plus Interest
	2,401.28	Interest 1981
981	42,422.62	Total money borrowed plus Interest
	2,545.36	Interest 1982
982	44,967.98	Total money borrowed plus Interes
	2,698.08	Interest 1983
983	47,666.06	Total money borrowed plus Interes
	2,859.96	Interest 1984
84	50,526.02	Total money borrowed plus Interes
	3,031.56	Interest 1985
85	53,557.58	Total money borrowed plus Interes
	3,213.46	Interest 1986
86	56,771.04	Total money borrowed plus Interes
	3,406.26	Interest 1987
87	60,117.30	Total money borrowed plus Interest

Money borrowed plus Interest

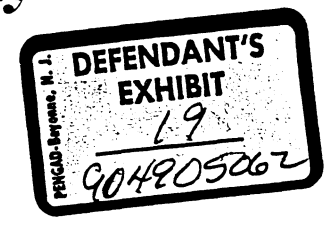
1987	60, 177.30	Total money borrowed plus Interest
	3, 610.64	Interest 1988
1988	63, 787.94	Total money borrowed plus Interest
	3, 827.28	Interest 1989
989	67, 615.22	Total money borrowed plus Interest
	4, 056.91	Interest 1990
1990	71, 672.13	Total money borrowed plus Interes
	4, 300.33	Interest 1991
1991	75, 972.46	Total money borrowed plus Interest

Utah Oil Refining Company

UTAH OIL BUILDING

Salt Lake City 10, Utah

GLEN A. FINLAYSON
Architectural Engineer



Sept. 6, 1964

I Roger W Finlayson promise to pay Glen A. Finlayson or ~~Mina~~ W. Finlayson $190.00 (one hundred ninety dollars) per month for rent of a duplex at 975 Diestel Road., S.L.C., Ut. for the amount of time Roger W Finlayson and Arvilla Finlayson live at said address. I further promise to pay 6% interest per year for each and every year, or part there of, that we live there or until all indebtedness is paid in full.

Roger W Finlayson

Lep 3

Rent Due - 995 Diestel Road.

starting sept. 1. 1964

Rent 190.00 per month for 5 years plus one month plus Interest until paid.

$2,280.00 - $190.00 X 12 = $2280.00 per year

	136.80	1st year Interest
sept. 1965	2,416.80	1st year Rent plus Interest
	2,280.00	2nd year Rent
	4,696.80	
	281.81	2nd year Interest
sept 1966	4,978.61	2nd years Rent plus Interest
	2,280.00	3rd Year Rent
	7,258.61	
	435.52	3rd years Interest
ept. 1967	7,694.13	3rd years Rent plus Interest
	2,280.00	4th Year's Rent
	9,974.13	
	598.45	4th years Interest
sept. 1968	10,572.58	4th years Rent plus Interest
	2,280.00	5th years Rent
	12,852.58	
	771.15	5th years Interest
sept. 1969	13,623.74	5th years Rent plus Interest
	190.00	one months Rent
	13,813.74	
	828.82	6th years Interest
sept. 1970	14,642.56	
	878.55	7th years Interest
sept 197	15,521.11	7th years Rent plus Interest

o sept. 1971	15,521.11	7th years Rent plus Interest
	931.27	8th years Interest
sept. 1972	16,452.38	8th year Rent plus Interest
	987.14	9th years Interest
o sept 1973	17,439.52	9th years Rent plus Interest
	1,046.37	10th years Interest
sept. 1974	18,485.89	10th years Rent plus Interest
	1,109.15	11th years Interest
sept 1975	19,595.04	11th years Rent plus Interest
	1,175.70	12th years Interest
sept. 1976	20,770.74	12th years Total Rent plus Inter
	1,246.25	13th years Interest
sept. 1977	22,016.99	13th years Rent plus Interest
	1,321.02	14th years Interest
sept 1978	23,338.01	14th years Rent plus Interest
	1,400.28	15th years Interest
sept 1979	24,738.29	15th years Rent plus Interest
	1,484.30	16th years Interest
sept 1980	26,222.59	16th years Rent plus Interest
	1,573.36	17th years Interest
sept 1981	27,795.95	17th years Rent plus Interest
	1,667.76	18th years Interest
sept 1982	29,463.71	18th years Rent plus Interest
	1,767.82	19th years Interest
sept. 1983	31,231.53	19th years Rent plus Interest
	1,873.89	20th years Interest
sept. 1984	33,105.42	20th years Rent plus Interest

sept 1984	33,105.42	20th years Rent plus Interest
	1,986.33	21st years Interest
sept 1985	35,091.75	21st years Rent plus Interest
	2,105.51	22nd years Interest
sept. 1986	37,197.26	22nd years Rent plus Interest
	2,231.84	23rd years Interest
sept 1987	39,429.10	23rd years Rent plus Interest
	2,365.75	24th years Interest
sept-1988	41,794.85	24th years Rent plus Interest
	2,507.69	25th years Interest
sept 1989	44,302.54	25th years Rent plus Interest
	2,658.15	26th years Interest
sept 1990	46,960.69	26th years Rent plus Interest
	2,817.64	27th years Interest
sept 1991	49,778.33	27th years Rent plus Interest

Recorded AUG 15 1978 956 W
Moffat, Welling & Paulsen
600
900 Tribune Bldg
84111

3153916

WARRANTY DEED

ROGER W. FINLAYSON, Trustee of the Mina W. Finlayson Revocable Trust, and MINA W. FINLAYSON, Settlor of the Mina W. Finlayson Revocable Trust, Grantors, of Salt Lake City, Utah, hereby convey and warrant to ROGER W. FINLAYSON and ARVILLA K. FINLAYSON, his wife, Grantees, of Salt Lake County, State of Utah, for the sum of Ten Dollars, and other good and valuable considerations, the following described tracts of land in Salt Lake County, Utah:

Parcel 1:
Beginning at the Northwest corner of Lot 80, Cottonwood Meadows A, B, and C, amended, and running thence South 87° 30' East 63.84 feet; thence South 57° 55' 40" East 80.0 feet; thence South 48° 45' West 66.48 feet; thence South 35° 07' 59" East 13.54 feet; thence South 51° West 27.70 feet; thence North 57° 55' 40" West 116.42 feet; thence North 29° 15' East 63.92 feet to the point of beginning.

Parcel 2:
Beginning at the Northeast corner of Lot 82, Cottonwood Meadows A, B, and C, amended, a subdivision located in the West Half of Section 9, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 35° 07' 59" West 13.54 feet; thence North 48° 45' East 66.48 feet; thence South 57° 55' 40" East 14.05 feet; thence South 48° 45' West 71.96 feet to point of beginning.

Parcel 3:
Beginning at the most Northerly point of Lot 80, Cottonwood Meadows A, B, and C, amended, Subdivision, and running thence South 87° 30' East 63.84 feet to Highland Circle; thence North 57° 55' 40" West 57.08 feet along Highland Circle; thence South 29° 15' West 31.54 feet to point of beginning.

WITNESS the hands of said Grantors, this 4th day of August, 1978.

Roger W. Finlayson
Roger W. Finlayson, Trustee of the
Mina W. Finlayson Revocable Trust

Mina W. Finlayson
Mina W. Finlayson, Settlor of the
Mina W. Finlayson Revocable Trust

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
9TH FLOOR TRIBUNE BUILDING
143 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111

BOOK 4722 PAGE 1196

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

On the 4th day of August, 1978, personally appeared before me ROGER W. FINLAYSON, Trustee of the Mina W. Finlayson Revocable Trust, and MINA W. FINLAYSON, Settlor of the Mina W. Finlayson Revocable Trust, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Notary Public
Residing at Salt Lake City, Utah

My Commission expires:
11-18-79

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
9TH FLOOR TRIBUNE BUILDING
143 SOUTH MAIN STREET
SALT LAKE CITY UTAH 84111

BOOK 4722 PAGE 1197

Recorded AUG 15 1978 9560
Moffat, Welling
& Paulsen
600
900 Tribune Bldg
84111

3153016

WARRANTY DEED

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WITNESS the hands of said Grantors, this 4th day of August, 1978.

Roger W. Finlayson
Roger W. Finlayson, Trustee of the
Mina W. Finlayson Revocable Trust

Mina W. Finlayson
Mina W. Finlayson, Settlor of the
Mina W. Finlayson Revocable Trust

BOOK 4722 PAGE 1196

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
9TH FLOOR TRIBUNE BUILDING
143 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

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Notary Public
Residing at Salt Lake City, Utah

My Commission expires:
11-18-79

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
8TH FLOOR TRIBUNE BUILDING
143 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111

BOOK 4722 PAGE 1197

STATEMENT OF ASSETS AND LIABILITIES
Finlayson v. Finlayson

	Arvilla	Roger
House and real property at 4950 Highland Circle including adjacent vacant lot-- to be sold and net proceeds divided equally after adjustment for property settlement as provided below	1/2	1/2
Automobiles:		
1987 Honda Accord (NADA Average trade-in)	6,300	
1987 Jeep Wagoneer (NADA Average trade-in)		9,425
1975 Dodge Van (NADA Average trade-in)		1,175
1978 Pace Arrow Motorhome (per appraisal)		12,000
1980 Dune Buggy		1,000
Motorcycles:		
1978 Honda 750cc		300
1985 Honda 700cc		1,900
1984 Honda 250cc		900
1968 Honda 90cc (2) (Plaintiff requests one)	50	50
1980 Honda 80cc		200
1978 Honda 75cc		50
23' Gulfstream boat		3,000
90 shs. Pacific Corp. @24.25 $2,182.50	2,182	

Commonwealth Equity Trust USA Value $9,800	9,800	
Putnam Fund $2,600	2,600	
Cash removed by defendant from Zion's Bank account prior to parties' division of account: 9/11/90 $9,300 9/12/90 9,000		18,300
Life USA Policy (Roger) $30,000	1/2	1/2
Life USA Policy (Arvilla)	1,000	
Camper World membership		6,000
Coin collection (Plaintiff estimates values $15,000-30,000)	1/2	1/2
Gun collection		15,500
Power and hand tools		10,000
"Precious moment" doll collection	1,000	
Personal property--furniture, furnishings, etc.	1/2	1/2
Commercial First Thrift proceeds divided equally	1/2	1/2
Vault $1,435 new		1,200
Fireplace insert $1,149		600
Utility trailer		900
Cement mixer $750 new		375
Riding lawn mower $1,500 new; one year old		1,000
Riding lawn mower, 18 yrs old, rebuilt engine, working condition		400
Motors--extensive collection of various types motors		?

Power edger $350 new		175
Mulcher $830 new		400
Snowblower $850 new		400
Canoe, metal, 23 yrs old. (Plaintiff requests)	300	
TOTAL VALUES	$23,232	$85,250
PROPERTY SETTLEMENT to plaintiff to equalize values to be paid from first proceeds of sale of home and/or lot; remaining sales proceeds to be divided between parties	31,009	(31,009)
NET DISTRIBUTION	$54,241	$54,241

SUMMARY OF ATTORNEY'S FEES AND COSTS
ARVILLA FINLAYSON

Attorney's fees

Sharon A. Donovan, 25.6 hrs. @$100	$2,560.00
Shannon W. Clark, 34.35 hrs. @$75	2,576.25
Kent M. Kasting, .3 hrs. @$125	37.50
Clerk/paralegal, 30.25 hrs. @$50	1,512.50
TOTAL FEES	$6,686.25

Costs

Filing/recording fees	$96.00
Service fees	25.50
Deposition costs	252.90
Copies/hand-deliveries	81.85
TOTAL COSTS (excluding trial)	$456.25

TOTAL ATTORNEY'S FEES AND COSTS	$7,142.50

UNNECESSARY FEES INCURRED DUE TO DEFENDANT'S LACK OF COOPERATION AND CONTEMPT OF COURT ORDERS AND PURSUIT OF FRIVOLOUS CLAIM (see highlighted charges on statements attached)	$2,599.15

REVIEW STATEMENT
FOR
INTERNAL USE ONLY

TO-BE-BILLED

Arvilla Finlayson
~~*DO not send to home*~~
4950 Highland Circle
SLC Ut 84117

DATE 01-25-91

ACC'T NO. 1-SADFINL/ARV-1C

PREVIOUS RETAINER BALANCE $2,000.00

1-30 Days:	31-60 Days:	61-90 Days:	Over 90:	Past Due:
$0.00	$0.00	$0.00	$0.00	$0.00

PRIOR ACCOUNT HISTORY:

Prior Charges:	Prior Service:	Prior Expense:	Prior Payment:
$60.00	$80.00	$0.00	$60.00
Prior Hours:	**Prior Int.:**	**Prior Tax:**	**Prior Cr.Adj.:**
0.80	$0.00	$0.00	$20.00

DATE	PROFESSIONAL SERVICES RENDERED	TIME	
	(SEE ATTACHED LIST)		
TOTAL FOR THE ABOVE SERVICES		10.95	$851.25

DATE	EXPENSES	
	(SEE ATTACHED LIST)	
TOTAL FOR THE ABOVE EXPENSES		$92.90

TOTAL $1,055.85 (

PAYMENT RECEIVED
TOTAL PAYMENTS $0.00

RETAINER BALANCE $1,055.85 (

REVIEW STATEMENT
FOR
INTERNAL USE ONLY

TO-BE-BILLED

Arvilla Finlayson
Do not send to home

DATE 01-25-91

ACC'T NO. 1-SADFINL/ARV-1C

ATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
2-14-90	CONFERENCE WITH CLIENT RE: WITHDRAWAL OF MONEY.	SAD	0.30	$30.00
2-19-90	CONFERENCE WITH CLIENT; DRAFT SUMMONS, COMPLAINT; BEGIN PREPARATION MOTION FOR TEMPORARY RESTRAINING ORDER.	SWC	2.25	$168.75
2-19-90	CONFERENCE WITH CLIENT.	SAD	0.30	$30.00
2-20-90	COMPLETE MOTION FOR RESTRAINING ORDER AND OTHER TEMPORARY ISSUES; MEETING WITH ARVILLA; OPEN TRUST ACCOUNT; REVIEW VERIFIED COMPLAINT AND MOTION FOR TEMPORARY RESTRAINING ORDER; CONFERENCE WITH SHARON DONOVAN TO DETERMINE SUPPORT AMOUNTS; TO COURT TO HAVE FILED - SIGNED BY JUDGE AND ISSUED.	SWC	4.50	$337.50
-20-90	CONFERENCE WITH SHANNON CLARK.	SAD	0.30	$30.00
-27-90	PHONE CONFERENCE WITH CLIENT; PREPARE FOR ORDER TO SHOW CAUSE HEARING; ATTEND ORDER TO SHOW CAUSE HEARING TO READ STIPULATION INTO RECORD.	SWC	2.25	$168.75
2-27-90	CONFERENCE WITH SHANNON CLARK.	SAD	0.30	$30.00
2-28-90	PHONE CONFERENCE WITH ARVILLA RE: TRISHA'S WHEREABOUTS; REVIEW ORDER SUBMITTED BY BILL RUSSELL.	SWC	0.25	$18.75
2-31-90	PHONE CONFERENCE WITH CLIENT RE: WEEKEND AND TRISHA'S WHEREABOUTS; ATTEMPTS TO PHONE BILL RUSSELL RE: SAME; LETTER TO RUSSELL RE: SAME.	SWC	0.50	$37.50

TE	EXPENSES	
-20-90	FILING FEE	$82.00
-20-90	Copies	$2.80
-20-90	Copies	$7.90
-21-90	Copies	$0.20

PROFESSIONAL SERVICES RENDERED RECAP

TIMEKEEPER	EFFECTIVE RATE	TIME	CHARGE
SAD	$100.00	1.20	$120.00

TO-BE-BILLED

Arvilla Finlayson
Do not send to home

DATE 01-25-91

ACC'T NO. 1-SADFINL/ARV-1C

PROFESSIONAL SERVICES RENDERED RECAP

TIMEKEEPER	EFFECTIVE RATE	TIME	CHARGE
SWC	$75.00	9.75	$731.25
TOTAL	$77.74	10.95	$851.25

REVIEW STATEMENT
FOR
INTERNAL USE ONLY

TO-BE-BILLED

Arvilla Finlayson
4950 Highland Circle
Salt Lake City, Utah 84117

DATE 03-22-91

ACC'T NO. 1-SADFINL/ARV-1C

EVIOUS RETAINER BALANCE $121.95 C

-30 Days:	31-60 Days:	61-90 Days:	Over 90:	Past Due:
$0.00	$0.00	$0.00	$0.00	$0.00

IOR ACCOUNT HISTORY:

ior Charges:	Prior Service:	Prior Expense:	Prior Payment:
$1,938.05	$1,816.25	$141.80	$60.00
Prior Hours:	Prior Int.:	Prior Tax:	Prior Cr.Adj.:
23.25	$0.00	$0.00	$20.00

TE	PROFESSIONAL SERVICES RENDERED	TIME	
	(SEE ATTACHED LIST)		
TAL FOR THE ABOVE SERVICES		9.60	$735.00

TE	EXPENSES		
05-91	COPIES	$0.60	
11-91	COPIES	$1.10	
TAL FOR THE ABOVE EXPENSES			$1.70

TOTAL		$614.75
TOTAL PAYMENTS		$0.00
AMOUNT DUE		$614.75

TO-BE-BILLED

Arvilla Finlayson
4950 Highland Circle
Salt Lake City, Utah 84117

DATE 03-22-91

ACC'T NO. 1-SADFINL/ARV-1C

ATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
2-01-91	INVENTORY AT CLIENT HOME.	SWC	2.75	$206.25
2-04-91	PHONE CONFERENCE WITH CLIENT RE: PROPERTY AND MOVE; LETTER TO RUSSELL RE: SAME AND FOLLOW UP TO INVENTORY.	SWC	0.40	$30.00
2-07-91	LETTER TO CLIENT RE: PROPERTY LIST FROM MR. FINLAYSEN AND ACCOUNTING.	SWC	0.20	$15.00
2-12-91	CONFERENCE WITH SHARON DONOVAN; PHONE CONFERENCE WITH CLIENT; LETTER TO BILL RUSSELL RE: CUSTODY EVALUATION AND REALTOR.	SWC	0.75	$56.25
2-12-91	CONFERENCE WITH SHANNON CLARK RE: CUSTODY EVALUATION.	SAD	0.30	$30.00
2-19-91	PHONE CONFERENCE WITH BILL RUSSELL RE: AGREEMENT ON EVALUATOR AND STATUS OF REALTOR; CONFERENCE WITH CLIENT RE: DISCOVERY, CUSTODY EVALUATOR, REALTOR, VISITATION AND APPRAISAL; LETTER TO RUSSELL RE: SAME.	SWC	1.40	$105.00
2-26-91	CONFERENCE WITH SHARON DONOVAN RE: STRATEGY FOR DISCOVERY, SELLING OF HOUSE AND GETTING EVALUATION STARTED.	SWC	0.50	$37.50
2-26-91	CONFERENCE WITH SHANNON CLARK RE: STATUS OF CASE.	SAD	0.30	$30.00
2-27-91	PHONE CONFERENCE WITH CLIENT RE: REALTOR, APPRAISOR AND VISITATION WITH TRISHA OVER WEEKEND.	SWC	0.25	$18.75
2-27-91	DICTATE INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS.	SWC	2.25	$168.75
2-28-91	PHONE CONFERENCE WITH RUSSELL RE: REALTOR; PHONE CONFERENCE WITH CLIENT CONFIRMING EAGER; CONFIRM WITH RUSSELL; LETTER TO RUSSELL RE: TAXES AND COOPERATION IN FILING.	SWC	0.50	$37.50

PROFESSIONAL SERVICES RENDERED RECAP

TIMEKEEPER	EFFECTIVE RATE	TIME	CHARGE
SAD	$100.00	0.60	$60.00
SWC	$75.00	9.00	$675.00
TOTAL	$76.56	9.60	$735.00

REVIEW STATEMENT
FOR
INTERNAL USE ONLY

TO-BE-BILLED

Arvilla Finlayson
4950 Highland Circle
Salt Lake City, Utah 84117

DATE 02-15-91

ACC'T NO. 1-SADFINL/ARV-1C

PREVIOUS RETAINER BALANCE $1,055.85 C

1-30 Days:	31-60 Days:	61-90 Days:	Over 90:	Past Due:
$0.00	$0.00	$0.00	$0.00	$0.00

PRIOR ACCOUNT HISTORY:

Prior Charges:	Prior Service:	Prior Expense:	Prior Payment:
$1,004.15	$931.25	$92.90	$60.00
Prior Hours:	**Prior Int.:**	**Prior Tax:**	**Prior Cr.Adj.:**
11.75	$0.00	$0.00	$20.00

DATE	PROFESSIONAL SERVICES RENDERED	TIME	
	(SEE ATTACHED LIST)		
TOTAL FOR THE ABOVE SERVICES		11.50	$885.00

DATE	EXPENSES		
	(SEE ATTACHED LIST)		
TOTAL FOR THE ABOVE EXPENSES			$48.90

TOTAL $121.95 C

TOTAL PAYMENTS $0.00

RETAINER BALANCE $121.95 C

REVIEW STATEMENT
FOR
INTERNAL USE ONLY

TO-BE-BILLED

Arvilla Finlayson
4950 Highland Circle
Salt Lake City, Utah 84117

DATE 02-15-

ACC'T NO. 1-SADFINL/ARV-

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
01-02-91	PHONE CONFERENCE WITH CLIENT RE: COUNSELING FOR TRISHA; DEBT FROM KURT; PHONE CONFERENCE WITH BILL RUSSEL RE: WHERE TRISHA WILL BE STAYING.	SWC	0.25	$18.
01-04-91	PHONE CONFERENCE WITH CLIENT RE: TRISHA'S WHEREABOUTS; BRIEFLY REVIEW DOCUMENTS FROM BILL RUSSEL; SEND TO CLIENT.	SWC	0.25	$18.7
01-07-91	PHONE CONFERENCE WITH BILL RUSSEL AND CLIENT RE: TRISHA'S WHEREABOUTS AND KEEPING CLIENT INFORMED.	SWC	0.25	$18.7
01-08-91	TELEPHONE CONFERENCE WITH CLIENT TO FORMULATE RESPONSES TO AFFIDAVIT; DICTATE RESPONSE AFFIDAVIT.	SWC	2.20	$165.0
[illegible]-09-91	REVIEW AFFIDAVIT.	SWC	0.25	$18.7
[illegible]-10-91	MEET WITH CLIENT TO FINALIZE AFFIDAVIT; REVIEW AND ADD LETTER FROM DOROTHY EVANS; PREPARE FOR HEARING.	SWC	2.25	$168.7
01-11-91	ATTEND AND ARGUE HEARING ON TEMPORARY MATTERS, INCLUDING CUSTODY AND POSSESSION OF THE MARITAL RESIDENCE.	SWC	1.25	$93.7
01-14-91	CONFERENCE WITH SHANNON CLARK RE: CUSTODY EVALUATION AND SELECTION OF LISTING AGENT FOR SALE OF MARITAL RESIDENCE.	KMK	0.30	$37.50
01-14-91	PHONE CONFERENCE WITH CLIENT RE: FOLLOW UP QUESTIONS AFTER THE HEARING.	SWC	0.25	$18.75
01-15-91	TWO PHONE CONFERENCES WITH PUELER'S CLERK RE: INTERVIEW TRISHA AND LORI; PHONE CONFERENCE WITH CLIENT RE: SAME.	SWC	0.60	$45.00
01-18-91	PHONE CONFERENCE WITH CLIENT RE: BREAK IN; PHONE CONFERENCE WITH BILL RUSSEL; LETTER RE: SAME.	SWC	0.75	$56.25
01-24-91	REVIEW RECOMMENDATION; PHONE CONFERENCE WITH CLIENT; LETTER TO CLIENT RE: SAME; PHONE CONFERENCE WITH BILL RUSSEL RE: INVENTORY AND RECOMMENDATION; PHONE CONFERENCE WITH CLIENT RE: SAME.	SWC	1.30	$97.50
01-24-91	CONFERENCE WITH SHANNON CLARK RE: DECISION.	SAD	0.30	$30.00
-25-91	PHONE CONFERENCE WITH BILL RUSSEL RE: FEBRURARY INVENTORY; PHONE CONFERENCE			

TO-BE-BILLED

Arvilla Finlayson
4950 Highland Circle
Salt Lake City, Utah 84117

DATE 02-15-91

ACC'T NO. 1-SADFINL/ARV-1C

ATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
	WITH CLIENT RE: SAME.	SWC	0.25	$18.75
1-29-91	REVIEW STIPULATION AND COMMISSIONER'S RECOMMENDATION; CALL BILL RUSSEL RE: SAME; PHONE CONFERENCE WITH CLIENT RE: SAME.	SWC	0.75	$56.25
1-30-91	PHONE CONFERENCE RE: INVENTORY.	SWC	0.30	$22.50

ATE	EXPENSES	
.-04-91	SERVICE FEE - SUMMONS & COMPLAINT	$3.75
.-04-91	COPIES	$1.10
.-04-91	SERVICE FEE - TRO & ORDER TO SHOW CAUSE	$21.75
.-04-91	HAND DELIVERY	$7.50
-07-91	COPIES	$1.00
.-10-91	COPIES	$11.70
.-18-91	COPIES	$1.20
.-31-91	COPIES	$0.90

PROFESSIONAL SERVICES RENDERED RECAP

TIMEKEEPER	EFFECTIVE RATE	TIME	CHARGE
KMK	$125.00	0.30	$37.50
SAD	$100.00	0.30	$30.00
SWC	$75.00	10.90	$817.50
TOTAL	$76.96	11.50	$885.00

SHARON A. DONOVAN (0901)
SHANNON W. CLARK (5678)
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main Street, Suite 1330
Salt Lake City, Utah 84101-2167
Telephone: (801) 521-6383

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, STATE OF UTAH

----------oOo----------

ARVILLA FINLAYSON,	:	PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION FOR FINDING IN RE: CONTEMPT, FOR ORDER COMPELLING COMPLIANCE WITH COURT ORDERS AND ATTORNEY'S FEES
Plaintiff,	:	
v.	:	
ROGER FINLAYSON,	:	Civil No. D90-5062
Defendant.	:	Honorable Timothy R. Hansen

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STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

COMES NOW the plaintiff, Arvilla Finlayson, after being first duly sworn upon oath, and deposes and states as follows:

1. I am the plaintiff in the above-entitled matter.

2. I have personal knowledge concerning the facts and circumstances surrounding the matters set forth below.

3. I am the ex-wife of Roger Finlayson. Our divorce was tried before the above-entitled Court on October 17 and 18,

1991. At that time, defendant and I stipulated to a number of matters, and the Court ruled on the remainder of the issues relating to the divorce.

4. In March of 1991, over a year ago, defendant and I stipulated that the marital residence should be immediately listed for sale. In addition, as a result of the divorce trial, the Court ordered that the marital residence be sold as soon as possible. Both before and after the divorce trial, defendant has been uncooperative with the then listing agent of Eager & Company. Accordingly, I have been speaking with different realtors and have signed a listing agreement with Miller & Company. Defendant has not been willing to cooperate in signing the listing agreement or in even speaking with the realtor on the telephone, in order to make the necessary arrangements to enter into the listing agreement and eventually show the home to potential buyers.

5. The agent I have listed with is Mr. Rudy Valley. He has informed me that he has made 10 to 15 attempts to contact defendant in person or by phone to get him to sign the listing agreement. On numerous occasions, he has been told by the minor child in defendant's custody that defendant is unavailable or not at home.

6. At the divorce trial, the Court ordered defendant to make necessary repairs on the home to facilitate its sale. I believe that the defendant has not made the necessary repairs and, in fact, holes still remain in the kitchen floor.

7. The marital residence is the primary asset of the marital estate and I am in dire need of the proceeds from the sale. Nonetheless, over a year after the original Order to sell the home, defendant continues to refuse make the necessary repairs to the home or to even enter into a listing agreement.

8. Pursuant to the Order of the Court, defendant and I were each awarded a vehicle. However, the defendant refuses to transfer to the me the title to my Honda and also the motor home I was awarded.

9. I have made the above requests of defendant numerous times, and my attorney has also made these requests through defendant's attorney with no response. See letter attached as Exhibit "A".

10. Although defendant has been residing in the mortgage-free marital residence for approximately one year, he refuses to be responsible for the property taxes that have accrued over this period of time. I have been forced to reside in various apartments and have paid the rents associated therewith with no assistance from defendant. It is reasonable and proper that defendant be ordered to immediately pay all property tax on the marital residence which became due in November of 1991.

11. Defendant had possession of the Camperworld membership during 1991. There is an annual fee associated with this membership of approximately $200.00 per year. I was awarded the camperworld membership at trial. I would like to be able to sell the membership, however, defendant has not paid the 1991 fee

and therefore I am unable to sell it until that is done. It is fair and reasonable to require defendant to pay the membership fee for the time period he had possession and transfer it to me so I may sell it.

12. Pursuant to the Order of the Court, defendant and I were ordered to select a family counselor to work with our minor child in counseling sessions. We were ordered to cooperate, schedule the sessions and each ordered to pay one-half. In a letter to defendant's counsel dated February 10, 1992, (attached) I suggested two names as counselors for Tricia. Since that time, I have received no response from defendant regarding commencement of these counseling sessions, and it is fair and proper for the Court to order defendant to cooperate in all respects in beginning Tricia's counseling sessions as soon as possible.

13. Pursuant to a stipulation, we agreed to divide the marital personal property by going from room to room in the marital residence and alternating selections. This has been a very time-consuming project. For the first several sessions, both defendant and I had our attorneys present to facilitate the arrangement. Since then, however, defendant and I have attempted to divide the personal property on our own. I have had a very difficult time reaching an agreement with the defendant on times that we could both meet at the home and complete the division of the personal property. It is my belief that defendant is purposefully sabotaging the division of property by not allowing me to come back in the home, by not returning my telephone calls, by not answering

the telephone and by refusing to allow me into the house even at time that have been previously agreed upon by defendant and myself and our counsel.

14. As an example of the difficultly I have had in dividing the personal property, I was awarded the 9 drawer dresser we had in our bedroom. All drawers were present until I made arrangements to take it out of the home at which time one drawer disappeared. Defendant claims he has no knowledge of the missing drawers whereabouts. In addition, defendant and I and both our attorneys inventoried the contents of the home in Winter 1991. Extensive lists of all the personal property were created. Since that time numerous items on the inventory are missing and defendant claims to have no information about their whereabouts. An example of the missing items is as follows: numerous brand new plush toys, camping supplies, chain saw, record player, family photographs and numerous other items. It is my belief that defendant is purposefully hiding this property from me.

15. I ask the Court to order defendant to participate in the completion of the division of personal property by specifically ordering defendant to cooperate in setting up several times that are mutually convenient when I may go into the marital residence and work with defendant in dividing property. It would be fair and proper for the order to require defendant to continue to cooperate until such time as both he and I are satisfied that all personal property in the marital residence has been divided.

16. Defendant and I were ordered to divide the stock acquired during the marriage equally. I have had the investment company send the documents necessary for division of the stock certificates directly to defendant. Defendant has refused to execute such agreements, and it is fair and proper that the Court order him to do so.

17. Pursuant to the Decree of Divorce, I was awarded the marital motor home. The motor home was stored at the marital residence. It was inside a locked fence. The vehicle and the gas tanks itself were locked, and only defendant had access to the keys. Shortly after the divorce trial, I went to the marital residence to pick up the motor home, at which time I discovered that sugar had been put into the motor home's gas tanks. Sugar crystals could be seen around the opening of the tank, and the sugar itself could be tasted and smelled. It is my belief that defendant is responsible for sabotaging the vehicle, and it would be fair and equitable for the Court to order him to make such repairs as would be necessary to put the vehicle in good working order so I may remove it from the residence and do with it what I would like.

18. I have had to bring this Motion to address the numerous Orders of the Court with which defendant refused to comply. As outlined above, defendant has engaged in a pattern of consistent refusal to obey Court Orders both before and after the Divorce was finalized. Further, I was awarded the nominal amount of $500.00 in attorney's fees at trial. As a result of defendant's

action and inaction, I have incurred attorney's fees and costs in bringing this Motion, and it would be fair and reasonable to Order him to pay my fees and costs in the amount of $1,000.00.

DATED this 25 day of March, 1992.

Arvilla Finlayson
ARVILLA FINLAYSON

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this 25th day of March, 1992.

Irene M. Clark
NOTARY PUBLIC

[S E A L]

Notary Public
IRENE M. CLARK
310 South Main St. #130
Salt Lake City, Utah 84101
My Commission Expires
November 12, 1995
State of Utah

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 26th day of March, 1992, a true and correct copy of the foregoing Plaintiff's Affidavit in Support of Motion for Finding in Re: Contempt and for Order Compelling Compliance with Court Orders was mailed, postage prepaid, to:

William R. Russell, Esq.
8 East Broadway, Suite 213
Salt Lake City, Utah 84111

Irene M. Clark
IRENE M. CLARK

CERTIFICATE OF DELIVERY

I hereby certify that four true and correct copies of the above and foregoing BRIEF OF APPELLANT duly hand delivered, addressed to:

William R. Russell, Esq.
8 East Broadway, Suite 213
Salt Lake City, UT 84111

DATED this 8 day of December, 1992

Kristine Wimmer